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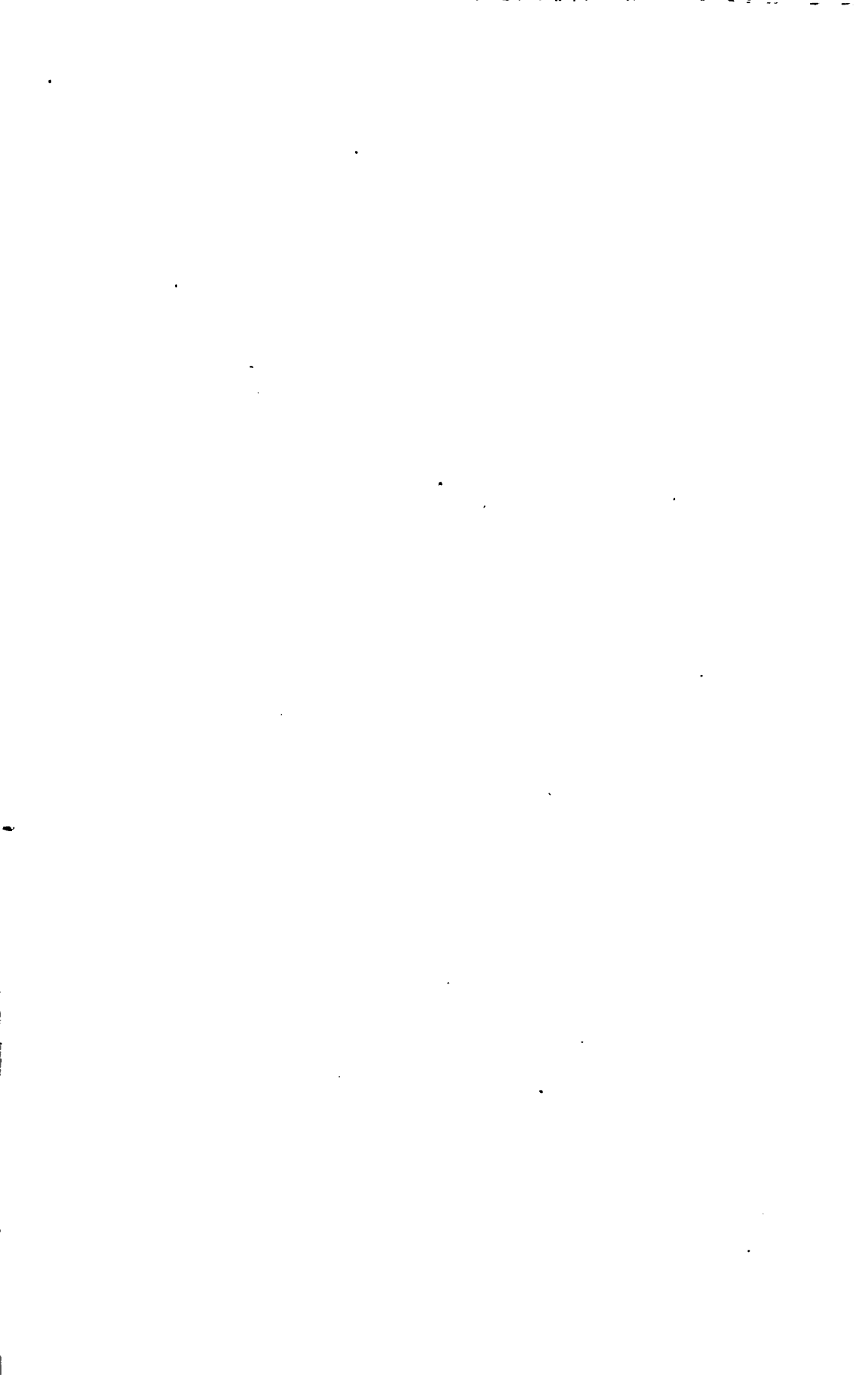


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CHRONICLES AND MEMORIALS OF GREAT BRITAIN
AND IRELAND

DURING

THE MIDDLE AGES.

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THE CHRONICLES AND MEMORIALS
OF
GREAT BRITAIN AND IRELAND
DURING THE MIDDLE AGES.

PUBLISHED BY THE AUTHORITY OF HER MAJESTY'S TREASURY, UNDER
THE DIRECTION OF THE MASTER OF THE ROLLS.

On the 26th of January 1857, the Master of the Rolls submitted to the Treasury a proposal for the publication of materials for the History of this Country from the Invasion of the Romans to the reign of Henry VIII.

The Master of the Rolls suggested that these materials should be selected for publication under competent editors without reference to periodical or chronological arrangement, without mutilation or abridgment, preference being given, in the first instance, to such materials as were most scarce and valuable.

He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an *Editio Princeps*; and for this purpose the most correct text should be formed from an accurate collation of the best MSS.

To render the work more generally useful, the Master of the Rolls suggested that the editor should give an account of the MSS. employed by him, of their age and their peculiarities; that he should add to the work a brief account of the life and times of the author, and any remarks necessary to explain the chronology; but no other note or comment was to be allowed, except what might be necessary to establish the correctness of the text.

The works to be published in octavo, separately, as they were finished; the whole responsibility of the task resting upon the editors, who were to be chosen by the Master of the Rolls with the sanction of the Treasury.

The Lords of Her Majesty's Treasury, after a careful consideration of the subject, expressed their opinion in a Treasury Minute, dated February 9, 1857, that the plan recommended by the Master of the Rolls "was well calculated for the accomplishment of this important national object, in an effectual and satisfactory manner, within a reasonable time, and provided proper attention be paid to economy, in making the detailed arrangements, without unnecessary expense."

They expressed their approbation of the proposal that each Chronicle and historical document should be edited in such a manner as to represent with all possible correctness the text of each writer, derived from a collation of the best MSS., and that no notes should be added, except such as were illustrative of the various readings. They suggested, however, that the preface to each work should contain, in addition to the particulars proposed by the Master of the Rolls, a biographical account of the author, so far as authentic materials existed for that purpose, and an estimate of his historical credibility and value.

Rolls House,
December 1857.

Deer Books

OF THE REIGN OF

KING EDWARD THE THIRD.

YEAR XVI. (FIRST PART.)

2d copy

Gr. Brit. Yearbooks, 1827-1877 (Edward II)

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DEAR BOOKS

OF THE REIGN OF

KING EDWARD THE THIRD.

YEAR XVI. (FIRST PART.)

EDITED AND TRANSLATED

BY

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INTRODUCTION.



INTRODUCTION.

I FEEL that an apology is due to all who take any interest in the Year Books for the long delay in the publication of the present volume. It has, however, been caused by circumstances over which I had no control, and which rendered the continuation of the work (with the all-essential references to the records of the cases) for a time impossible. A way out of this difficulty has now been found, and I trust that the editing will proceed not less rapidly, at any rate, than in earlier years. Considerable progress has already been made with another and a larger volume.

The delay
in the con-
tinuation
of the
work.

A scheme for bringing to light the principal contents of the *Placita de Banco*, in addition to the cases reported in the Year Books, had long appeared to me a possibility, notwithstanding the enormous bulk of the Rolls. The plan of a Calendar including all the cases which reached final judgment or issue has now been accepted. The execution of this design will, I trust, ensure that the comparison of the reports with the Plea Rolls of the Common Bench, which I have always regarded as a necessary part of the work, shall be fully carried out. This, in relation to the Year Books is, of course, the principal consideration; but it may also be hoped that the Calendar, proceeding in future *pari passu* with the Year Books, will afford new information of value to the lawyer, as well as to the genealogist, and to the student of social history. The rolls of almost every term contain recitals of proceedings, agreements, deeds, and other matters extending backwards for many

Scheme
for bring-
ing to light
the princi-
pal con-
tents of
the *Placita
de Banco*.

generations, and it may reasonably be inferred that many subjects which have hitherto remained in obscurity will be made comparatively clear. There will also, perhaps, be a sensible addition to those "*Placita Anglo-Normannica*" which Mr. Melville M. Bigelow most carefully brought together in the year 1881.

The records and the reports.

Since the appearance of the last volume of Year Books in this series, Sir Frederick Pollock and Professor Maitland have published their admirable "History of English Law before the time of Edward I." They have lamented (Vol. II. p. 557) that not "a hundredth part of the industry that has been spent on Roman legal history" has been "devoted to our plea rolls." They say also (Introd. p. xxxv) that "the first and indispensable preliminary to a better legal history than we have of the later middle ages is a new, a complete, a tolerable edition of the Year Books." It may, perhaps, be added that no edition could be even tolerable which contained no reference to the records corresponding with the reports. From the time when I undertook to edit the unpublished Year Books (some thirteen years ago) to the present, this opinion has, to my mind, been confirmed by every case which I have had the good fortune to identify on the rolls. Should, therefore, the work on the Year Books, and the rolls which illustrate them, as now arranged, be continued, I believe that a fresh and abundant source of history will be opened up.

It is unnecessary to enlarge upon the general relation which the plea rolls bear to the reports, as the subject has been treated in an article written for the Harvard Law Review.¹ One of the cases, however, to which I referred was, at the time, unpublished, and appears in the present volume. It is the third report in Hilary Term, to which two records² correspond, the first being incomplete, the second in a different form,

¹ Harvard Law Review, Vol. VII. (January, 1894), pp. 266 *et seq.* | ² *Placita de Banco*, Hilary, 16 Edw. III., R^o. 64 and R^o. 181.

and complete. "The clerk, however, omitted to vacate the first by placing in the margin the usual words '*vacat quia alibi*.' The proceedings were on the judicial writ of *Quid juris clamat*, brought for the purpose of compelling tenants for life to attorn after a fine had been levied. The tenants, husband and wife, alleged that the wife's estate was an estate tail in virtue of a previous fine, and not a mere estate for life, as purported in the fine on which the *Quid juris clamat* was brought. Then arose a question whether the tenants could be admitted to aver this in opposition to the particular fine on which suit was taken. The court held that they could, and that the fact must be tried by a jury, adding that the whole matter should be entered on the roll, and that enquiry should be had as to the whole.

In making the first entry on the roll a mistake had occurred with regard to the process by which the tenants were required to appear, *Distringas* having been substituted for *Venire facias*. There is also an important difference between the first entry and the second as to the effect of the earlier fine. In the first it is stated that the tenements had been granted and rendered to the wife and her previous husband and the heirs of their bodies, that they therefore claimed a fee tail in the person of the wife, and that they prayed judgment whether they ought to attorn in respect of such an estate. This was in accordance with the earlier part of the report, counsel for the tenants having distinctly used the words 'fee tail,' on the ground apparently that the wife was what would in later times have been called tenant in tail after possibility of issue extinct. In the second entry, however, the express claim of a fee tail is omitted, and the following words are substituted : 'So that if the same Robert and Margaret (the first husband and the wife) should die without heirs of their bodies, the tenements should remain to the right heirs of Robert, and they say that Robert died with-

' out heirs issuing from his body and the body of Margaret, and they claim to have such an estate in the person of Margaret, and pray judgment whether they ought to attorn in respect of such an estate.' This also is in accordance with the later part of the report, counsel having changed the form of pleading after argument.

We thus see how faithfully the clerks attempted to place the pleadings on the roll, and the difficulties with which they were beset. The second entry on the roll is, no doubt, a faithful representation of the matter which the Court directed to be enrolled, as the first entry was of words which had, in the first instance, fallen from the mouth of counsel. The second entry shows the conclusion of the case,—the verdict for the demandants, to the effect that Margaret and her husband held only for life (as supposed by the fine on which proceedings were instituted), and judgment for the demandants to recover seisin. In the report these details are deferred to a later term."

The case may possibly have some interest as showing that there was, at the period, a little hesitation in defining the estate of the survivor of two tenants in special tail, when there was no issue of their bodies, and as showing what questions of fact might be decided by the verdict of a jury. It is, however, here used only for the purpose of showing how the Clerks of the Common Bench dealt with the pleadings in the Court.

The MSS.
of Year
Books
used for
the present
volume.

The MSS. which have been used for the text of the present volume are the same as for the last, viz. the Temple MS., the Lincoln's Inn MS., the Additional MSS. in the British Museum numbered 16,560 and 25,184, and the Harleian MS., No. 741, all of which have already been described. The reports, however, are more

complete in each MS. for both of the terms comprised in this volume, than for those which appear in its predecessor. Nearly every case appears in all the MSS., and the work of collation has consequently required much time.

The long marginal notes are mostly from the Additional MS. No. 25,184. They do not always throw much additional light on the cases, and they, no doubt, prove troublesome to the printers; but I did not feel that I should be justified in omitting them, as they help to show what were the kind of reports with which our forefathers had to work. It is probable, too, I think, that in the multiplication of copies by hand, for the use of the profession, various remarks originally made in the margin became incorporated in the text, though the MSS. are all approximately contemporaneous. It is difficult to account otherwise for the occasional interpolation of a query, with the answer *Credo quod non*, and for various observations, complimentary or otherwise, on statements of law by particular persons.

The more the MSS. are studied the more it is possible to understand the difficulties with which lawyers had to deal before the use of the printing press. We do not know whether Judges or Counsel usually possessed more copies than one of the reports of any particular term, but we may be quite sure that the possessor of any one copy alone must have been lamentably ill-informed with regard to many cases. It not unfrequently happens, too, that the essential point which it was the main object of the report to illustrate cannot be fully understood by comparison of all the MSS. without reference to the record. The precise terms in which issue was joined, for instance, can be ascertained with absolute certainty from the record, but are sometimes obscure in the report even after all the MSS. have been compared.¹ On the other hand, the impor-

The difficulties which they must have caused to the profession of old.

¹ See, for instance, Nos. 19 and 20 of Easter Term in the present volume.

tance of these precise terms is commonly shown only by the report of the arguments which precede this joining of the issue, and which have no counterpart in the rolls.

Villeins,
peasants,
pais, and
patria.

The case No. 13 of Hilary Term presents several features of interest. It contains a word which does not often occur in the Year Books—"Peasants." The term is so used as to show that peasants were included under the term "bonds," or bondmen, which also included villeins. Certain rent was in dispute on a Writ of Escheat. William Thorpe pleaded that the tenant received it "by the hands of his bondmen, as of his villenage," i.e. as of land held in villenage; and in another part of the report he expressed the same meaning by the words "through the hands of peasants and villeins." Thus it appears that in the language of the day a freeholder could not be a peasant, or a peasant a freeholder.

A peasant (*paysan*, or *païsan*) is etymologically an inhabitant of the country (*pays* or *païs*). In the French of the period the word *pays* or *païs* is always used in a sense which might perhaps be equivalent to one or other of the significations of the word "country." It represents, however, two quite distinct Latin words. When issue is joined "to the country" it is in French (as spoken in England by the lawyers) *al païs*, but in Latin *ad patriam*. Here the word *païs* is made to do duty for a word with which it has no etymological connexion. In a more general sense, however, as used in France and England, *pays* is derived from *pagensis* (the Italian *paese*), or, at any rate, from some word of which the origin is the Latin *pagus*.

Strangely enough, when an issue had to be tried by the country, by the *patria*, by a jury, it could not be tried by the *païsans* because they were not "free and

lawful men," though it had to be tried by the *pais*. There was a very old distinction between conveyances by matter *in pais* and those by matter of record, between those effected in the country or on the spot, and those in one of the superior courts. Here again the word *pais* appears to be used in a sense very nearly the same as that in which it is used when a jury has to be summoned. The *patria* is a jury of persons from a particular neighbourhood, and matter *in pais*, as distinguished from matter of record, is "matter which lies in the cognisance of the country, and can, therefore, be established by a verdict of jurors."¹ Freeholders, however, would, of course, not put their rights to the decision of villeins, or of persons who held only in villenage. Villeins were expressly excluded from serving on juries;² and service on juries, with the lord's knowledge, if proved by record of the King's court, was sufficient proof that a man was not a villein.³ It was also provided by Statute that no one should be put upon assises or juries who had not a sufficiency of freehold estate.⁴

Among other matters which illustrate the laws and manners of the period we find that one who claims the feudal wardship marries his own daughter to an heir of the age of fifteen.⁵ We see a judgment of the Pope's Judges Delegate, and how it was received by the Court of Common Pleas⁶; and we see the practice of the Pope as to the appointment of vicars mentioned in the same Court.⁷ The Chief Justice of the Court of

Various
subjects
illustrated
in the
volume.

¹ The words between inverted commas, which conveniently express the fact, are from 2 Pollock's and Maitland's *History of English Law*, 667.

² Britton, Lib. II. c. 21. § 3.

³ Britton, Lib. I. c. 32. § 24.

⁴ Stat. 18 Edw. I. (Westm. 2) c. 38, and 21 Edw. I. St. 1.

⁵ Below, p. 129, note 12.

⁶ Below, pp. 148-150, 151, note 4.

⁷ Below, p. 158.

Common Pleas refuses to seal a Bill of Exceptions, in accordance with his interpretation of the Statute of Westminster the Second, c. 31.¹ A person who had been found guilty in an action of Trespass, and had brought an Attaint to show that the jurors had made a false oath, was detained in the Fleet Prison because he had not made any fine to the King; but the Warden of the Fleet was ordered to produce him in Court every day until the action was determined.² There are also various curious points occurring throughout the reports which may be of interest to the philologist, the grammarian, and all those who take an interest in the names of places and of persons. The description of these in detail would require more space than it would be right to devote to the subjects in the present Introduction.

Scire facias to repeal a charter of Edward III. to the Burgesses of Wells: the full details of the case not hitherto known.

The case, however, which will probably be considered the most important of those in the present volume is the *Scire facias* to repeal or revoke the charter by which King Edward III. had granted certain franchises to the Burgesses of Wells, in Somersetshire.³ The portions of the report scattered under various heads in Fitzherbert's Abridgment appear to have been but little known, and are not very intelligible as they stand. A translation of extracts from the case, as it appears in the Temple MS., was published by Merewether and Stephens⁴ in 1835, but all the passages relating to the non-issue of the writ of *Ad quod damnum* are omitted, and there are serious inaccuracies in the part which is printed. The record was not to be found with others of the same class on the Common Law side of the Chancery, but had long been hidden away under the comprehensive head "Miscellaneous." The exemplification of the proceedings

¹ Below, p. 164.

² Below, pp. 170-172.

³ Below, pp. 108-120.

⁴ *History of Boroughs*, 680.

in Court obtained by the Bishop of Bath and Wells has been entered in the *Liber Albus I.*,¹ among the Wells Cathedral MSS., but the account given of it in the Appendix to the Tenth Report of the Historical MSS. Commission² is too brief to attract attention, and might even lead to the supposition that the first charter granted by King John, and not that granted by Edward III., was repealed. The matter now brought to light may therefore, perhaps, serve as a small contribution to borough history in general, and may also, perhaps, to some extent, modify the ideas commonly entertained concerning the borough of Wells in particular.

Some little labour has been spent in trying to ascertain what was previously known on the subject. If the ever increasing flow of publications in all branches of learning be considered, the position of any one who writes on any historical question becomes every day more difficult in relation to other writers. If he quotes every modern author who has done good work he will confuse the original sources of history with the later opinions of historians; if he refers only to original authorities he may be thought guilty of discourtesy, or ignorance, or over-weening self-sufficiency. Still, his best course is, probably, to acknowledge an obligation wherever he feels that there is one, to make sure, as far possible, that what he has to say has not been said in the same way before, and to marshal the facts which he has collected according to his own ideas. He will, probably, be more terse and concise if he looks neither to the right nor to the left, but steadily pursues the path which he has marked out for himself, and if he eschews controversy as being for the most part unprofitable.

There must, however, be exceptions to all rules. When any special question is under consideration, it may be well to ask whether any one who has gone before has had special qualifications and special facilities for

¹ Fo. 244 et seq.

| ² P. 112.

answering it. In relation to the town of Wells it cannot be doubted that the name of the late Professor Freeman will suggest itself, not only because he was an untiring writer of histories and historical essays, but also because he resided many years on the spot, and lectured and wrote about the particular city and its church.

So far as can be ascertained, he was not acquainted with the charter granted by Edward III. to the Burgesses, or with the events which rendered the 15th, 16th, and 17th years of the reign the most memorable in the history of the borough. In relation to an earlier period (some incidents of which it is necessary to know in order to understand all that afterwards occurred) he seems to have been content to follow Dugdale and the County Historians, Collinson and Phelps, or their authorities, though sometimes with an added emphasis which was not, perhaps, on every occasion altogether fortunate.

Statements
as to early
"charters
of incor-
poration"
granted by
Bishops to
the Bur-
gesses of
Wells.

For his *History of the Cathedral Church of Wells*, which is in the form of a series of lectures, Professor Freeman appears to have relied, to a great extent, upon a so-called History of the Bishops of Bath and Wells published in Wharton's *Anglia Sacra*. This has been commonly attributed to an anonymous Canon of Wells whom Professor Freeman frequently styles "the Historian of Wells." Had the work been that which it purports to be, as published by Wharton, it could not have contained any contemporary account of events of the 12th century, because it is brought down to the year 1423. Recent investigations however, have shown that the history by the "Canon of Wells" is practically a compilation made by Wharton himself. It is a "composite document" from "two anonymous tracts of the fourteenth and fifteenth centuries which Wharton has woven together to form a continuous epitome of the earlier episcopates."¹

¹ *Chapters in the Early History of the Church of Wells*, by Canon Church, Introduction p. xii. The two tracts are called respectively

Historia Minor, and *Historia Major*, and are contained in the book called *Liber Albus* (Register iii) among the Wells Cathedral MSS.

In the first of his lectures Professor Freeman asserts that Bishop Robert (whose episcopate extended from 1135 or 1136 to 1166) "gave the first *charter of incorporation* to the burghers, who had gradually come to dwell under the shadow of the Minster."¹ It requires a light heart to speak of a charter of incorporation granted to laymen—and that by a mesne lord—in the middle of the twelfth century. No authority at all is given for the statement. "The Canon of Wells" is in no way responsible for it, and has nowhere said that Bishop Robert ever did anything for the "burghers" of Wells. He did, however, say that Bishop Reginald, who was Robert's successor, was the first who made the town of Wells a free borough, and freed the burgesses from the servile tasks by which they had previously been oppressed.² In a note to his second lecture, Professor Freeman (though not withdrawing what he had said in his first) remarked that the "Canon of Wells" speaks of Bishop Reginald "as granting the first municipal rights to the citizens of Wells,"³ and he seems to have left the point for others to determine. Still he did not express any doubts as to the exact position of the burgesses of Wells after their first charter, whensoever they may have obtained it. He could not, of course, have had the advantage of reading Sir Frederick Pollock's and Professor Maitland's recent work in which corporations regarded as fictitious persons, the township, and the borough have been assigned their respective places in the history of English law. He could not even, when he delivered his lectures, have seen the remarks in the Constitutional History of Dr. Stubbs (now Bishop of Oxford) as the first edition was not published until

¹ Freeman's *History of the Cathedral Church of Wells*, p. 40.

² 1 *Anglia Sacra*, 562.

³ *History of the Cathedral Church of Wells*, p. 170, note 27.

1874.¹ It is less easy to explain why he has passed over in silence the well-known doctrine that incorporation cannot be effected without the assent of the Sovereign (as implied by prescription, or expressed in charter, or Act of Parliament), as well as the difficulties which might occur to any one who had weighed the words of the earlier charters to towns, or even glanced at the works of Brady, Madox, or Merewether and Stephens.

The story as to the earliest "incorporation" of Wells appears to have been evolved by Collinson and the editors of Dugdale's *Monasticon* from the words of the so-called "Canon of Wells" in the *Anglia Sacra*. It is there said that Bishop Reginald "fecit villam Wellie liberum Burgum." In the *Monasticon* this is amplified as follows: "He likewise *incorporated* the town of Wells, and constituted it a free borough."² So also it is said in Collinson's "History of Somerset,"³ and, in the same words, in Phelps's "History of Somersetshire," that the city was first *incorporated* by Reginald Fitz-Joceline in the time of Richard I. It is but one step further to a "Charter of Incorporation."

The purport of charters to be ascertained only from the charters themselves.

Charter of Bishop Robert touching Fairs.

It is hardly necessary to say that the true purport of any charters to Wells or its burgesses is not to be sought second-hand from Wharton, Dugdale, Collinson, or Phelps. In order to have any real knowledge of the charters, we must have before us the actual words of the charters themselves.

I am informed by Mr. Reginald L. Foster, the Town Clerk of Wells, who has most kindly made search for me, that there is no original charter of Bishop Robert among the City Archives. There is, however, among the Wells Cathedral MSS. a charter of Bishop Robert touching fairs in Wells, which is also entered in the

¹ e.g. First Edn. Vol. I. p. 410, Vol. III. p. 586, &c.

² Dugdale *Monasticon Anglicanum* (last edition), 277.

³ 3 Collinson *Hist. Somerset*, 376; 2 Phelps *History of Somersetshire*, 17.

Liber Albus III.,¹ but it is not a grant to the men or burgesses of Wells in particular. It does not contain either the word "borough" or the word "burgess." It forbids the holding of fairs (*nundinas*) in the church or in its vestibule (*atrium*) on account of the disturbance to worshippers. On the other hand, all persons who meet in the open places of the town on May 3 (*in Inventione Sanctæ Crucis*), on October 14 (the Feast of St. Calixtus), and on November 30 (St. Andrew's Day) are to be allowed to transact their business freely, and secure from every evil custom. The concluding words of the charter are; "We grant also and ordain, with the advice of our Clerks, that all persons on the Feasts aforesaid, and on their Eves, be quit of toll for ever."

We thus find certain advantages granted, not to the men or burgesses of Wells, but to every one frequenting fairs in the open spaces in Wells on six days in the year, the consideration being that they are to abstain from trafficking and making a noise in the Cathedral Church or its approaches. We may be quite sure that we have not here any charter of incorporation.

This charter of Bishop Robert was confirmed by his successor, Bishop Reginald, and was recited in the charter of confirmation, which was made on the petition of Reginald's burgesses of Wells, and which extended the fairs to the morrow as well as the eve of each of the three Feasts, but reserved a moiety of the stall-hire (*conductus seldarum*) to the Bishop, with the consent of the burgesses.² This appears to be the earliest existing instrument in which the "burgesses" of Wells are mentioned, but it is not a charter of incorporation. The "burgesses" made a transaction with the Bishop, but

Not a
charter of
incorpora-
tion.

Confirma-
tion by
Bishop
Reginald:
first men-
tion of the
"Bur-
gesses"

¹ Wells Cathedral MSS., *Liber Albus III.*, fo. 245, d. Town Hall at Wells (printed in Canon Church's *Chapters in the*

² Bishop Reginald's charter among the City Archives in the *Early History of the Church of Wells*, Appendix E., p. 359).

if it could be conceived that they did so as a corporate body, it must have been in virtue of some previous incorporation.

Bishop
Reginald's
grant in
accordance
with the
tenour of
another
charter
from
Bishop
Robert:
first men-
tion of the
Borough.

There is another charter of Bishop Reginald¹ which is in the form of a grant, purporting to be in accordance with the tenour of another charter of Bishop Robert. It is to the effect that the town of Wells shall be a Borough for ever within the bounds defined in Robert's charter, which, however, are not set out.

Thus some regulations as to fairs in one charter, and the possible existence of the word "borough" in another (which is not now known to exist) constitute the whole basis of the so-called charter of incorporation supposed to have been granted by Bishop Robert.

Bishop Reginald gave further liberties to the inhabitants of Wells, but in such a manner as to show that they were conferred upon the individuals and not upon any corporation: "We will that every one possessing a messuage within the same bounds, in the name of burgage,² have free license to dwell, depart, and return, and to mortgage, sell, or give his house (except to Religious Houses) at his pleasure, saving the whole right to our rents, that is to say, 12*d. per annum* for every messuage."³

Another concession made by Bishop Reginald was that of jurisdiction, but the terms in which it was made are very vague. Except where life and member were concerned, or one of the litigants made complaint to the Bishop's Justice, the burgesses were free to settle in their

¹ Also among the City Archives (printed in Canon Church's *Chapters, &c.*, Appendix E., p. 362.)

² The words "nomine burgagii" are omitted from Bishop Savaric's subsequent confirmation.

³ This grant necessarily had the effect of freeing each individual to whom it applied from the servile

condition described in Domesday Book: "Episcopus Wellensis tenet Welle . . . Ibi . . . xx villani . . . De hac terra . . . tenent Canonici xiiij hidas. . . Ibi xvj villani." Under the head *Terra Episcopi Wellensis* (Somerset). Vol. I., p. 89, in the edition of 1783.

own way any disputes arising within the ambit of the message of any one of them, without paying any custom or amends to the Bishop's Justice.

Bishop Reginald's successor, Savaric, recognised in the grants of his predecessors the intention of bettering the condition of the borough, and carrying it forward to greater freedom. He also granted to the borough of Wells, and to all and each of the burgesses who had "*mansionem*" within the bounds, all the liberties and free customs of burgesses and boroughs having full liberties. He defined the limits of the borough, which was now to be a "free borough." He expressly confirmed Bishop Reginald's grant of privileges as to disposal of houses in the borough by burgesses, but reserved the same rents in the same terms. He expressly confirmed the jurisdiction allowed by Bishop Reginald to the burgesses, adding the words "*in curia sua*." He renewed the previous regulations concerning the three fairs, but mentioned also a fourth to be held on the Anniversary of the Dedication of the Chapel of St. Thomas the Martyr, its Eve, and its Morrow.¹

Bishop Savaric's charter: first mention of the "Free Borough" of Wells.

Let us now consider how much had been gained, or seemed to have been gained, from the Bishops in accordance with the terms of their charters. The *villa* had become a free borough, and the *villani* had become free burgesses. The men of the *villa* which was a part of the bishop's demesne, or some of them, at any rate, had to all appearance previously been villeins, who might be thrust out if their lord so pleased, but who could not quit the demesne without his license. They had held their houses and lands at his will, and he could demand from them such services as he pleased. But at the moment when land within defined limits became a "free borough," the relation between the lord and his

General effect of the charters from the three Bishops.

¹ Bishop Savaric's charter among the City Archives of Wells (printed in Canon Church's *Charters, &c.*, Appendix N., p. 386). The Anni-

versary of the Dedication of the Chapel of St. Thomas is also the Morrow of St. John the Baptist.

tenants of that land was completely altered. The holder of a messuage was a free man, and held by a free tenure. He held in burgage¹ at an ascertained rent.

The borough was to be a free borough *in perpetuum*, according to Bishop Reginald's charter, and the burgesses were to enjoy their free customs *jure perpetuo*, according to that of Bishop Savaric. But there was nothing in either of the charters which expressly gave or confirmed to the burgesses any kind of definite corporate constitution, or which made any provision for corporate or any other succession. The grants were made by particular bishops to burgesses in existence at a particular time, and not to the burgesses and their heirs (much less their successors) to hold of the bishop and his successors. A burgess of Wells, it would seem, could sell his messuage to any stranger, who would at once step into all the vendor's privileges on payment to the bishop of 12*d. per annum*. The burgesses did not hold their own borough to farm in fee, or even for a term of years, but each paid individually his fixed rent to the Bishop. So far we have no mention of any guild merchant in the borough, nor apparently could there have been any by grant from a bishop on his own authority, for the precursor of the later doctrine that there could be no corporation without the King's consent, appears to have been the immemorial doctrine that there could be no guild without the King's license.² There was no mayor, and there is no mention of any bailiffs or other officers who could

¹ It has been shown by Sir F. Pollock and Professor Maitland that there might be burgage tenure where there was no borough, but we are not at present concerned with that point.

² See the Great Roll of the Exchequer, 26 Hen. II., Dorset and Somerset, where it appears that the borough of Wareham and the burgesses of Ilchester were amerced

for having guilds without warrant. The cases are cited with others in Madox's *Firma Burgi*, 26. Instances in which there were grants of guilds by Mesne Lords have been collected in Gross's *Gild Merchant*, but the lords may have had the King's license, and the grant is often followed by a royal confirmation.

act in the name of the borough, and if there was a *præpositus*, or reeve, there is nothing to show that he was elected by the burgesses. There was some sort of court, the precise nature of which is not defined. So far as is known, there was as yet no common seal, and no instrument under the common seal of the burgesses of this period is known to exist.¹ There were fairs, but it is not expressly stated that the burgesses of Wells were grantees or owners of them.

We now come to a wholly different phase in the history of the borough. The last of the charters of the bishops (that of Savaric) is attributed to the year 1201. Within a few months the burgesses obtained a royal charter from King John, the grant of which seems to require very careful consideration. If the charter of Savaric was good for all the purposes expressed in it, where was the need of a similar charter from the King? It may be admitted that, as between the bishops and their men, any charters given by the bishops would be sufficient for the manumission of their villeins. But had the bishops the power, without license from the King, to create a borough or to erect a fair? They would certainly have had no such power at a later period, and there is reason to doubt whether they strictly had such power at the end of the twelfth, or the beginning of the thirteenth century. There are, indeed, other instances of mesne lords granting somewhat similar charters, but it would be difficult to show that they were good, without license.

King John's charter supersedes them.

Even among the Archives of the Cathedral of Wells² we find a charter from King Richard I. to Bishop Reginald, granting him power to make a borough *in terra sua de Radecliva*, to have and to hold to him and his successors for ever, with a market, and with all

The men of the town "and their heirs" to be free burgesses, and to have free customs and certain free fairs.

¹ Mr. B. L. Foster, the Town Clerk of Wells, has found no trace of a common seal at this period.

² *Liber Albus I.* (Wells Cathedral MSS.), fo. 15.

other free customs and liberties which any borough in the Realm of England has. A royal prerogative in relation to boroughs and markets is here plainly asserted on the one hand, and admitted on the other. It would, therefore, appear either that the charters of the bishops creating Wells a borough were of no avail, or that they were made with the King's consent.

In any case the charter of Bishop Savaric was superseded by the charter of King John. He "granted and confirmed" that Wells should be a free borough, and the men of the town *and their heirs* free burgesses, that they should have a free market in Wells every Sunday, as there had been wont to be, and that they should have free fairs annually on the Feasts of St. Andrew, St. Calixtus, and the *Inventio Sanctæ Crucis*, and on the Morrow of St. John the Baptist (which was the anniversary of the dedication of the chapel of St. Thomas the Martyr). Nothing is said of the Eves and the Morrows of the four days mentioned, but King John, of his own gift, granted that the burgesses should have another annual fair on the 9th of May (the Translation of St. Andrew), to continue eight days, unless it should be to the nuisance of neighbouring fairs. The burgesses and their heirs were to have all the liberties and free customs of a free borough and of free burgesses, and appertaining to such a market and such fairs as those granted, "integre et honorifice in perpetuum." They and their goods and possessions were to be in the King's hand, keeping, and protection, and no one was to molest or disturb them or their heirs in opposition to the charter.¹

Position
of the
burgesses
afterwards.

The status of Wells as a free borough, and of its burgesses as free burgesses, whatever the precise meaning of those terms may have been, was thus established by the charter of King John. This, however, did not

¹ *Cartæ Antiquæ*, E. 26., compared, where the words are faint or obliterated, with the *Inspecimus* on the Charter Roll, 18 Edw. I. No.

31 (m. 11), and with the *Inspecimus*, on the Charter Roll, 1 Hen. IV., pt. 1, No. 13 (m. 27).

deprive the bishop of any rights which he may have had over the burgesses considered as his tenants. He was still their lord, and the rents for their burgages were still due to him. The ownership of the market and fairs on the particular days mentioned, if any ownership there was, would appear to have been vested in the burgesses by the terms of the charter, but there is no mention of any toll of any kind, and the profits of fairs must have consisted chiefly of the tolls. It will be seen that there were disputes in relation to these matters at a later time. The right of the burgesses to convey their messuages and their right to settle disputes in their own court do not appear in the King's charter, but it was possibly one of the incidents of a free borough that the burgesses could dispose of their real or personal estate in any lawful manner, and that they could hold some kind of court or borough-moot. Of this, however, we may be certain—that whatever may have been the franchises of Wells, they were the least that could be enjoyed by a free borough as incidents.

In the reign of Edward I.,¹ special commissions issued to enquire in the several counties of England touching various matters, and particularly those affecting the Crown. Among the articles of enquiry one was: What persons other than the King claim to have Return or Estreats of Writs, or hold pleas *de vetito namio*, and other royal franchises, by what warrant, and since what time? The returns to the commissions (commonly known as Hundred Rolls) included one under the head of the borough, and another (described as supplementary) under the head of the city of Wells. The jurors in the one case said that the Bishop of Bath and Wells had the return and estreats of writs, all kinds of amercements, chattels of fugitives and persons condemned, fines *pro licentia concordandi*, and fines for trespasses "from all his men and fees," by charters of

Their re-
turns as
to the
Bishop's
rights in
4 Edw. I.

¹ Rot. Lit. Pat. 2 Edw. I., m. 6.

King John and King Henry III.¹ The jurors in the other case said that the bishop took and kept all estrays (*averia de astraure*) coming upon his land, took the chattels of persons condemned for felony, of outlaws, and of fugitives, had the return of writs (all by royal charter) and held pleas *de vetito namio* throughout the whole of his fee.²

From this it appears that the borough or city of Wells did not possess a liberty of its own exempt from the jurisdiction of the Sheriff of the County of Somerset, but that it was a part of the liberty of the Bishop. If process issued from one of the King's Courts at the suit of a party against a burgess or citizen of Wells, it would be served or executed, not in the first instance by the Sheriff of the County of Somerset, not by any officer of the borough of Wells, but by the bailiff of the Bishop's liberty. This was probably not a little galling to the "free burgesses" of a "free borough," especially when they knew that burgesses elsewhere were in a very different position. If, for instance, they had travelled no further than Gloucester, they would have found the burgesses there enjoying their own liberty, and having the return of writs,³ a guild merchant, a common council, and the election of their own officers and of coroners, together with a jurisdiction of their own sharply defined by royal charter.⁴ It was clearly better to be the King's burgesses than a bishop's burgesses.

The Quo
Warranto
of 8 Edw. I.

The Justices in Eyre came to Somersetshire in the 8th year of the reign of Edward I. and held pleas of Quo Warranto. The Bishop of Bath and Wells was then summoned to show by what warrant he held (*inter alia*) the borough of Wells, and by what warrant he claimed to have return of the King's writs, pleas *de*

¹ *Rot. Extract.* 4 Edw. I., No. 3. m. 18. (Printed in *Rotuli Hundredorum*, 134.)

² *Ib.*, m. 14. (Printed *ib.*, p. 186.)

³ *Rot. Extract. Com. Glouc.*, 4 Edw. I., No. 3, m. 18d. (Printed in *Rot. Hundr.* 178.)

⁴ *Rot. Chart.* 1 John, part 2, m. 2. (Printed p. 56.)

vetito namio, and the chattels of persons condemned, and of fugitives in his land.¹ The hearing of the cause was adjourned (in order to suit the Bishop's convenience) to the Quinzaine of St. Martin, and into the King's Bench (*coram nobis ubicunque, &c.*); and the record and process were sent thither. There is, however, nothing to be found in the *Placita coram Rege* of that date, which relates to the matter, and though the printed volume of *Placita de quo Warranto* purports to be complete, the conclusion of the case does not appear in it. Having ascertained, however, that there was a copy of the subsequent proceedings among the Wells Cathedral MSS.,² I felt myself bound to inspect it. I found it to be in a contemporary handwriting, and to contain all the information which was sought. It afforded, moreover, a clue to the original record, which proved that the published volume of *Placita de quo Warranto* is not to be trusted as an exhaustive reproduction of the Eyre Rolls containing cases of *Quo Warranto* of the reign of Edward I.

It was clear from the copy at Wells that the conclusion of the case must, strange as it might appear, be not in the King's Bench Roll, and not in the Eyre Rolls for Somerset, but in the Eyre Rolls for the county of Southampton, and there, upon search, it was immediately found.³

In one passage there is a recital of the adjournment into the King's Bench, and the transmission thither of the record and process; and there is a *Mittimus* to Solomon de Roffa and his Fellow-Justices in Eyre at Winchester, "*mandantes quod recorda et processus*

¹ Eyre Roll, 8 Edw. I. Somerset Rex Re. 68 (printed *Placita de Quo Warranto*, 708).

² *Liber Albus I.* fo. 8 d.

³ Eyre Roll, Southampton, 8 Edw. I. Rex (No. 788) Re. 47; also Eyre Roll, Roff. (No. 788)

Re. 46. It is difficult to understand how these *Placita Forinseca de Quo Warranto* escaped the attention of the editors of the printed book, as they published others from the same (Rex) Roll.

“prædicta recitari et irrotulari faciatis prout coram nobis et Concilio nostro, in præsentia vestra, præfate Salomon, nuper fuerat ordinatum.” All this, however, is cancelled in the duplicate rolls examined, and in one of them (*Rex*) there is the word *vacat* in the margin. The matter occurs in the Wells copy without any sign of deletion.

The Bishop produced King John's charter alone, and not that of any Bishop, to show that Wells was a Free Borough.

The subject did, however, according to the record, come before the King and the Council, which was at this time very closely associated with the Court of King's Bench.¹ The Bishop's answer or plea, as to the Borough of Wells, was that the vill or town of Wells was at one time the ancient demesne of the church of Wells, and that afterwards King John granted that it should be a Free Borough by a charter, which the Bishop produced, and that by such warrant the Bishop held it. The judgment thereupon was (in relation to Wells and other matters in dispute) in the Court of the Justices in Eyre :—Because by inspection of the charters aforesaid, which also were recited elsewhere before the Lord the King and his Council, touching the aforesaid manors of Axbridge and Cheddar, and borough of Wells, it appears to the Justices here that the aforesaid Bishop has shown sufficient warrant, it is adjudged that, as to this writ, he do go without day.

We do not know whether in the oral pleadings any mention was made, on behalf of the Bishop, of the charters granted to the burgesses by his predecessors, because no report of the case has yet come to light. We can, however, be absolutely certain that we have before us the answer of the Bishop which the Court allowed him to plead. The indisputable record shows that the charters of the bishops purporting to create a free borough were not recognised in the King's Court. Either they were produced and disallowed, or the Bishop was advised that he should not produce them. Thus, in

¹ See Pike's *Constitutional History of the House of Lords*, 44.

the year 1280, it was accepted as law on all hands—by the King, by the Council, by the Justices in Eyre, and by the Bishop of Bath and Wells himself, that Wells was a Free Borough by virtue of King John's charter, and by virtue of King John's charter alone.

In later times we hear nothing of any further charters from the bishops. Ten years after the *Quo Warranto* the burgesses obtained an exemplification and confirmation of King John's charter from King Edward I.;¹ and although, as we shall presently see, the burgesses made one supreme effort to place themselves on a level with more favoured boroughs and cities, this remained practically their only charter for many generations.

Confirmation of John's charter by Edward I.

During the interval, however, it is evident that they made some attempts to organise themselves. They certainly got themselves a common seal in or before the reign of Edward II. "There is an original grant of land in Wells, dated A.D. 1315, with a very perfect impression of this seal (the large City Seal) attached to it."² They also appended their common seal to a bond in the year 1336 (10 Edward III.), and the terms of this instrument show very distinctly the extent to which the ideas concerning a borough and burgesses had developed. "To all the faithful in Christ to whom the present writing shall come, Richard le Eyr, Seneschal of the Guild³ of Wells, Thomas de Testwode, and Thomas le Saltere, and the whole community of the same town (*villæ*) Greeting in the Lord. Know ye that we are held, and by this present writing bound, to the venerable and discreet men, the Lords, the Dean and Chapter of the Church of St. Andrew, Wells, for

The common seal: form of documents under it.

¹ Charter Roll, 18 Edw. I. No. 81 (m. 11).

² Mr. Serel's *The Insignia of the Corporation of Wells*, p. 8. I am indebted to Mr. Foster, the Town Clerk of Wells, for the reference.

³ "Señ Gilde," i.e. *Seneschallus* or *Senescallus Gilde*. A *Sigillum Seneschalli Communitatis Burgi Wellie* was in use as early as 1316. *Insignia*, &c., p. 4.

" twenty casks of good and suitable wine to be paid to
 " them or their attorney at Wells, ten casks on Sunday
 " next after the Feast of the Nativity of the Lord, and
 " ten casks on Sunday next after the Feast of the Holy
 " Trinity, next to come after the date of the execution
 " of these presents, for the faithful making of which
 " payment on the said day, and at the said place, we
 " bind ourselves and our heirs, and all our goods move-
 " able and immoveable, wheresoever they may be found,
 " to the coercion and distress of every judge, whether
 " secular or ecclesiastical. In witness whereof our
 " common seal is appended to this present writing
 " obligatory. Given at Wells on Thursday next after
 " the Feast of St. Michael the Archangel in the tenth
 " year of the reign of Edward the third after the
 " Conquest."¹

The com-
 munity
 and their
 " heirs."

Notwithstanding the use of a "common seal," notwithstanding even the mention of a guild, there is no indication here of the existence of any "body politic" or "corporation" in the sense in which those terms were used when they first came into use in England. The security which the Dean and Chapter had for the delivery of the wine was the property of three named persons and their heirs, and of the community and their heirs, but not the property of any corporate body. The use of the word "heirs," and not of the word "successors," is sufficient of itself to distinguish the community of the borough or town from a corporation of later date. As applied to the community, the heirs could be only the heirs of the particular individuals of which it was composed. They and their heirs, together with the three named persons and their heirs, were made liable, as individuals, to the whole extent of their possessions, but there is no mention in the instrument of any corporate property whatever.

¹ From the *Lib. Alb. I.* (Wells Cathedral MSS.) fo. 246 d., where the bond is entered in a contemporary hand.

The appearance of the Head of a Guild is of considerable interest. It is quite certain that a Guild Merchant did not pass with the words "Free Borough." There is no mention of any guild in the charters of Bishops Robert, Reginald, or Savaric, or in any known charters of the Kings. On the other hand, it is clear that the Dean and Chapter of Wells had no objection to the use of the term. There are many possible theories in relation to this point. There may have been some unknown royal charter granting to the burgesses the right to have a guild. There may have been some such charter from a bishop with license from the King. There may have been an episcopal grant without the royal license, which would have been without warrant, or irregular. Lastly, there may have been an organisation initiated by the burgesses and never duly confirmed, with regard to which the Bishop may not have cared to raise any question, and which may not have been brought to the notice of the King or his advisers—an adulterine guild such as there had been, not far off, at Ilchester. The existence or non-existence of a guild merchant had been elsewhere a subject of dispute, and had led to riots and bloodshed. The town of Bury St. Edmund's, for instance, was in a chronic state of disturbance from the year 1304 to the year 1327, one of the subjects in dispute between the townsmen and the Abbot being the question whether the townsmen had or had not a guild merchant. In 1327 they succeeded in extorting from the Abbot by violence a charter, in which the recognition of the guild merchant was included. They must, however, have believed that a grant from the Abbot alone, without the royal assent, was worthless, for one of the clauses of the charter bound the Abbot under a penalty of 3,000*l.* to procure the King's confirmation.¹

Question as to the existence of a duly warranted guild.

¹ In the Additional MS. (British Museum), No. 17891, are transcripts of the following documents:—*Certiorari*, dated 14 June,

7 Edw. II.; Return to the *Certiorari* of proceedings under a special commission of Oyer and Terminer in 33 Edw. I. In these pro-

In many boroughs the existence of the guild merchant does indeed seem to have been recognised by the mesne lord, but in some of these, at any rate, it was enjoyed in virtue of a direct grant from the King, and not of a grant from the mesne lord himself. There is no reason to believe that Wells was thus favoured; a guild, with a royal warrant, could hardly have been ignored in the charters of John, Edward I., Edward III., Richard II., Henry IV., Henry VI., and Elizabeth.

Unsuccessful petition from the burgesses to the King and Council touching a guild merchant.

About this time indeed—possibly as early as the reign of Edward I., possibly in the reign of Edward II., possibly at the beginning of the reign of Edward III.—we find the burgesses of Wells attempting to obtain a confirmation of the previous royal charters in a declaratory form.¹ Among the matters which they wished to have “declared” in detail, one was that they and their heirs might have their guild merchant as freely and as fully as the citizens of Winchester² and of Bath. Their petition to the King and Council also included many of the points which we find in the subsequent charter of Edward III.³—the various exemptions, the election of coroners, and the election of a mayor, who was, however, to be presented to the Bishop as lord of the town. They prayed also, that they might not be impleaded outside their town in respect of any land or tenement within it, and that neither they nor their heirs or successors might be distrained to appear elsewhere.

ceedings (f. 63) appears the claim of a guild merchant in Bury made by Nicholas Fouke *et alii conspiratores*, and (fo. 64) the denial of its existence by the Abbot. The riots in which the Bury men succeeded in extorting a charter from the Abbot are described in the *Memorials of St. Edmund's Abbey* (M.R. Series), Vol. II. pp. 329-333, and the charter itself is printed, Vol. III., pp. 302-316, the clause relating to the royal confirmation being at p. 316.

¹ *Ancient Petitions of the Chancery and Exchequer*, No. 7517, formerly known as *Petitions to the King in Council*, No. 8771. The date can only be conjectured from the handwriting, and other internal evidence, but it can hardly be earlier than the end of the reign of Edward I., or later than the beginning of the reign of Edward III.

² As to the privileges enjoyed by Winchester, *see* below, p. lxxv.

³ Below, p. xlvii.

Had the burgesses succeeded, they would have obtained some entirely new franchises in the guise of a confirmation, because the privileges for which they asked formed the subjects of special grants to other burgesses, and were not necessary incidents of every "free borough." The petition was, however, naturally treated as an application for a new charter. This appears, from the endorsement, directing the usual enquiry, whether it would be to the prejudice of the King or others if the points contained in the petition were granted. The result of the inquisition must have been unfavourable to the burgesses, as there is no known charter precisely in accordance with the terms of their prayer.

It is, however, beyond doubt that the burgesses of Wells were discontented with their position in the reign of Edward III., and they again set themselves to do that which their brother burgesses had done elsewhere. The moment seemed favourable. The royal treasury was exhausted by the wars with France and Scotland; and charters and confirmations of charters were being freely granted for an adequate consideration. The burgesses of Wells had application made to the Chancery for a new charter, and paid forty pounds¹—a considerable sum in those days. They also paid five marks for Letters Patent granting them "murage,"² to be levied for the repair of the walls which they were about to build. The sum of forty pounds was the full market value of a good charter. The men of Coventry about the same time paid five pounds for having a guild merchant,³ and forty marks for the King's charter touching divers liberties.⁴ The burgesses of Stafford also gave forty shillings for a confirmation of charters.⁵ The citizens

Purchase
of a new
charter
and of the
right to
levy mur-
age.

¹ Exchequer, *Rot. Orig.* 15 Edw. III. Ro. 115.

² *Rot. Orig.*, as above; see also *Rot. Lit. Pat.*, Pt. 2, m. 32.

³ Exchequer, *Rot. Orig.*, 14 Edw. III. Ro. 25.

⁴ *Ibid.*, 15 Edw. III. Ro. 115.

⁵ *Ibid.*, Ro. 114.

of Bath had recently given twenty pounds to have a confirmation of their charters,¹ and the burgesses of Shrewsbury forty shillings for confirmation of one particular charter.² Various other boroughs also gave various sums about the same time for confirmations, but Wells with its forty pounds stands out as a very liberal contributor to the needs of the Exchequer.

Was the
new
charter a
"charter
of incor-
poration"?

The question whether a charter not containing any express words to that effect can be a charter of incorporation is one of no small difficulty. At any rate the charter which the Burgesses of Wells now succeeded in obtaining from Edward III.³ was much more like a charter of incorporation than that which they obtained from King John, because, if for no other reason, they were to have a Mayor and Bailiffs who were to perform certain ministerial acts. The grant was, moreover, in favour of the burgesses and their heirs and successors being burgesses of Wells.⁴ Except in their petition of slightly earlier date, this is the first occasion on which we find their successors mentioned, and the use of the word "successors" is certainly of very great importance in the history of the growth of lay corporations. It seems to bring the communities, as it were, by a stroke of the pen almost into line with those ecclesiastical communities, which we now call corporations, as for instance, with Dean and Chapter and their successors, or with Abbot and Convent and their successors; but there is still one step wanting, and that is the disuse of the word heirs.

¹ Exchequer, *Rot. Orig.*, 14 Edw. III., R. 28.

² *Ibid.*, 15 Edw. III. R. 115.

³ For the matters included in the charter, see below, pp. xlvii.-l.

⁴ In Gross's *Gild Merchant* (I. 98, note 3), it is said that the earliest charter of incorporation of which a trace has been found is that of Edward III. to Coventry.

This is of three years later date than the charter to Wells, which it resembles in many particulars; and it contains also the words *heredes et successores*. It is to the effect, *inter alia*, that the men of Coventry and their heirs and successors are to have *communitatem inter se*, but the words "corporation" and "body politic" are wanting.

If we were to accept Madox's definition, the charter of Edward III. would apparently be a charter of incorporation. According to him "a town non-corporate had succession only as an aggregate body or community, or, if you please, as one generation succeedeth another. This might be called a natural succession. On the other part, a town corporate had succession as an aggregate body or community too, but as a community modified or put into a particular form; it had succession under a special denomination, suppose of Mayor, Bailiffs, and Community, Mayor, Jurates, and Community, or the like. And this was a complex kind of succession, to wit, both natural and artificial."¹

It is another question whether either grantor or grantees fully realised those distinctions which inevitably suggest themselves from a modern point of view. The early mortmain laws were practically directed against ecclesiastical communities alone, and it seems to follow that the existence of that which we now call a lay corporation was not then recognised at all, or else was thought to be of no practical importance.

It has been asserted by Madox that the terms "corporation" and "body politic," or their Latin equivalents, are not found in charters until about the reign of Henry VI. The word "body" used in relation to a community is certainly found considerably earlier in law reports, if not in charters. There is, however, a wide difference between the time of King John and the earliest time at which the word "body," or "corporation" was anywhere applied to anything resembling a lay corporation; and it is by no means impossible that the words were seen by some lawyers to be applicable to circumstances already in existence long before they were formally used in charters. Complex

The use of the terms "corporation" or "body politic" as applied to lay corporations of comparatively late growth.

¹ Madox, *Firma Burgi*, 50. A "commonalty" might nevertheless be named alone as plaintiff or de-

fendant in an action, if there were no mayor, bailiffs, &c., 22 *Li. Ass.* 67.

ideas, like that of a *persona ficta*, are slow of growth, and slowly adopted, and do not spring like Minerva, ready armed from the head of Jupiter. There may even have been a time when the burgesses of some boroughs may have been a corporation without knowing it themselves, just as M. Jourdain spoke prose more than forty years in absolute ignorance of the fact.¹

The idea
of a
"body"
or a
"gross"
in the
reign of
Edward
III.

It was really about the reign of Edward III.—the reign with which we are now concerned—that the idea of the lay corporation, the lay *persona ficta* (as now understood) was painfully elaborated.² The doctrine that there could not be a writ of *Capias* against a "commonalty" was definitely expressed at least as early as 22 Edward III.,³ and the practice had been in accordance with this doctrine considerably earlier. There is a very curious case at the end of the reign which shows not only that the lawyers had come to the notion of a "body," afterwards called a "body politic," but also by what road they had travelled. They had often been troubled by the question whether something in dispute was appendant or appurtenant to something else, or was a thing by itself and independent, which they called a gross (*un gros*). It was, for instance, a common subject of argument whether an advowson was a gross (according to modern phraseology "in gross") or appendant. By a curious psychological process they realised that what we now call a corporation was "a gross," or something which had an existence *per se*: and this something they called alternatively "un corps." Thus they came to the idea of an individuality composed of the members of a corporation, or as we might now say to the idea of a *persona ficta*. At the same time it was held that the commonalty of a guild which had not

¹ Molière, *Le Bourgeois Gentilhomme*, Acte II., Scène 6.

108, as pointed out in Gross's *Gild Merchant*, I. 94, note.

² There appears to be only one earlier mention of a borough as "a corps," Y. B., Easter, 4 Edw. II.

³ 22 *Li. Ass.* 67; see also Y. B., Hil., 45 E. 3, No. 5, fo. 2.

been affirmed by royal charter could not be adjudged to be a body (*un corps*) capable of purchasing an estate of freehold.¹

It was while these modes of thought were ripening that the burgesses of Wells obtained their charter from Edward III. This was a faithful representation of the commercial manners and customs of the time as well as of that curious transition through which the legal mind was passing when it began to realise that an association of laymen, to be called not long afterwards a corporation, might have successors, but had not shaken itself free from the idea that those successors must also be described as heirs.

By the charter of Edward III.,² the Burgesses of Wells were to be quit of *theolonium* throughout the whole of the King's realm. This *theolonium* was also called *tolnetum*, and comprised a great number of different tolls or duties. Thus in Wells itself it included a toll levied on cattle and horses at the gate of the pound on market-days, and a toll upon ale, cheese, and corn brought to market. It also seems to have included "Stede-gabel," which was a fine levied of divers merchants.³ The burgesses would be exempt from such imposts when making their purchases in other parts of the kingdom, while strangers coming to Wells would have to pay them unless specially exempted by prescription or charter.

The burgesses were to be quit also of *passage*, which was a toll payable for passing over water by boat.⁴ They were to be quit of *lastage*, which seems to have been a toll levied according to the measure of goods by

His charter to Wells representative of the period.

Exemption from toll.

Exemption from passage, lastage, stallage, picage, and paiaage.

¹ 49 *Li. Ass.* 8.

² The charter is recited in the writ of *Scire facias*, and in the writ of *Dedimus potestatem* to admit the attorneys of the burgesses. Both writs are attached to the roll, with other documents.

(Miscellaneous Rolls, Chancery, Bundle 13, No. 5.)

³ Certificate from the Exchequer annexed to the record of the proceedings in the *Scire facias*.

⁴ Stat., 4 Edw. III. c. 8.

the last. They were to be quit of *stallage* or dues on setting up stalls in fairs or markets, and of *picage* or dues payable on breaking ground on which stalls were to be pitched. They were to be quit of *paiage*, which seems to have borne the same relation to land as *passage* to water. The word *peage* was common in France from the time of Charlemagne downwards. It was a due payable by merchants using highway or causey, bridge, or embankment, the ostensible justification for which was, as for the later turn-pikes, the necessity of maintaining the permanent ways for those who chiefly used them. Exemption from this impost on their provisions was, in France, enjoyed by Princes of the Blood Royal, and was specially mentioned in an Arrêt, dated at Paris the 8th of June, 1387, in favour of the Duchesse d'Orléans, daughter of Charles le Bel. It was claimed also by the *Pairs de France* and by the *French Corps de Parlement*.¹

Exemption from wharfage, tronage, murage, and work on castles, &c.

The Burgesses of Wells were, according to the new charter, to be quit also of *kaiage*, *quayage*, *wharfage*, or dues payable on loading or unloading goods at any quay or wharf. They were to be quit of *tronage*, which was a duty for the weighing of wool by the *trona*, or beam. As a very great portion of the wealth of England lay in its wools this privilege, was of no small value. They were to be quit of *murage*, which was a toll from every cart, wain, or horse coming into an enclosed town, and was taken for the maintenance of the walls as a defence in time of war, insurrection, tumult, or riot.² They were to be quit of all service of work upon castles,

¹ The authorities in relation to this subject have been collected by Laurière. See his *Glossaire Du Droit François*, (Niort, 1882). It may, however, be remarked that he identifies *peage* with *pedagium*, whereas in some English

charters both *pedagium* and *pau-gium* are mentioned together, e.g., in King John's charter to Portsmouth. Printed, *Rot. Chart.* 77.

² Stat., 3 Edw. I. (Westm. I.) c. 31; 2 Inst. 222.

houses, walls, ditches, causeys or roads, bridges, and all other aids and works for the King throughout the whole of the King's realm.

They were to have power to elect and create out of their own body a Mayor, Bailiffs, and Constables for the preservation of the peace, as well as Coroners to make attachments touching Pleas of the Crown in the Borough, who would have to answer before the Justices in Eyre touching these and all other matters appertaining to their office.

Election of
Mayor,
Bailiffs,
Constables
and
Coroners.

There was to be one gaol in the borough, of which the burgesses were to have the keeping, as well as that of all prisoners taken within the borough.

Borough
Gaol.

The burgesses were to have the return of all the King's writs, and of all his summonses of the Exchequer in any way affecting the borough, and the execution of them by their mayor or other officers. No sheriff or other bailiff or officer of the King was to intermeddle in respect of any summonses, distresses, or attachments within the borough, or to enter it for the purpose of doing anything relating to his office, except upon default of the mayor, bailiffs, or burgesses.

Return of
Writs.

No burgess was to implead or be impleaded outside the borough in respect of any lands or tenements within the metes and bounds of the borough, or in respect of trespasses, contracts, covenants, or any other matters arising within the borough and its liberty. All such pleas were to be held before the mayor and bailiffs within the borough, and not elsewhere, and were to be there determined.

Cognis-
ance of
Pleas.

The burgesses, so long as they dwelt within the borough, were not to be placed with men from without the borough, nor men from without the borough with them upon assises, juries, or inquisitions, in respect of their lands or tenements, or in respect of trespasses, contracts, or other matters, either within the borough or without; but assises, juries, and inquisitions touching

Privileges
as to
Juries.

anything arising within the borough, were to be constituted and taken of the burgesses themselves and no others, unless such pleas, assises, juries, or inquisitions, touched the King or the community of the borough.

Walls,
battle-
ments, and
moats.

Lastly, the burgesses might enclose their own borough, according to its ancient metes and bounds, with a wall of stone and lime, and with ditches (or moats), and might crenellate or embattle the wall, and hold it so fortified and embattled for ever.¹

The *Scire*
facias to
repeal the
charter.

The *Scire facias*, for the repeal of the charter, as returned into the Chancery, bears date the 16th of November, in the 15th year of the reign (A.D. 1341), and the burgesses were to appear in the Chancery, wheresoever it might be in England, on the Quinzaine of St. Hilary following (the 27th of January). The charter is recited in the writ. It is also stated that the King, in consequence of certain reasons and evidences shown before him and his Council, had observed that the franchises and exemptions contained in the charter had been granted incautiously and without the customary process. They would, moreover, be to the prejudice both of himself and of his people in the County of Somerset, if allowed to remain in force, all which might more fully appear, as had been said, in accordance with the insinuation of some of the King's officers, and of others desiring to sue on his behalf.

Admission
of the Bur-
gesses to
appear by
attorney.
Com-
mence-
ment of
the hear-
ing on the
27th of
January
1341-2.

There was also a writ of *Dedimus potestatem* directed "to our dear Clerk, John de Briggewauter," to admit the attorneys of the burgesses.

At the Quinzaine of St. Hilary, according to the report in the 16th year of the reign, but according to the record in the 15th year, the pleadings in Chancery

¹ As Professor Freeman has remarked, Wells never has been a walled city (*History of the Cathedral Church of Wells*, 86), but this was not because its burgesses were

unlike other burgesses, or did not desire to have their town fortified. It was solely because they failed, for technical reasons, to maintain their charter.

commenced. The discrepancy in date requires, perhaps, a little explanation. Each year of the reign of Edward III. began on the 25th of January. The Feast of St. Hilary was on the 13th of the same month. The Feast of St. Hilary in the year 1341-2 was in the 15th year of the reign, but the Quinzaine of St. Hilary, which was on the 27th of January, was in the 16th year. The Hilary Term with which we are concerned began on the 23rd of January, in the year A.D. 1341-2, and in the 15th year of the reign, but on the 25th of January immediately following became Hilary Term in the 16th year. Thus almost the whole of the Term fell in the 16th year, and all the reports are described in the Year Books as being of Hilary, 16 Edward III. The exact description of this Hilary Term, which is found in some records, is "*anno xv^o finiente, xvj^o incipiente.*" It is of importance to know the precise date at which the pleadings in Chancery actually began in order to know the relation which certain documents attached may bear to them.

The hearing of the cause then commenced on the 27th of January 1341, according to the Old Style, or 1342, according to the New Style. There was a formal recital of the writ of *Scire facias*, which, as already explained, embodied the words of the charter. There was also the formal appearance of the burgesses by their attorneys.¹ There was then, as usual, a dilatory plea, founded on the Sheriff's return to the writ, it being alleged that the words "*Scire feci quod sint coram Rege ad ostendendum, &c.*" did not sufficiently show in what Court the burgesses were to appear—whether in the Chancery or in the Court of King's Bench.² This exception, of which no notice is taken in the record, was, according to the report, overruled. As the burgesses had already appeared, and as the Court of

Dilatory
plea: plea
to the
jurisdiction.

¹ The Record, at the commencement.

² The Report, below, p. 108.

Chancery was mentioned in the writ, the decision on this point was probably not unexpected. It may, however, perhaps, be observed that the plea was in effect a plea to the jurisdiction of the Court, and not to the form or substance of the writ, as the plea to the writ came afterwards. The order of pleading seems to have been even at this early period established, (1) to the jurisdiction, (2) to the disability of the person, (3) to the count or declaration, (4) to the writ, (5) to the action, or in bar.

A second
plea to the
jurisdiction.

The proceedings, though held in Chancery upon a writ of *Scire facias*, were in a form very similar to that which is found in proceedings upon a Writ of Error in the King's Bench. The making of the charter, the enrolment of it in Chancery, and the issue of it to the burgesses, are treated as judicial errors of the Court of Chancery. The counsel for the burgesses does not seem to have disputed at first that the case which was to be argued was one of error, and he took the point (which was in effect another plea to the jurisdiction) that an error committed in the Court of Chancery could not be redressed in the same Court, and that the repeal of the charter could not be effected without a commission from the King, or the assent of Parliament. Such a commission, however, could of course issue from the Chancery, and Parnis, the Chancellor, remarked, "If we can issue a commission to some one else to try this matter touching the King, *a fortiori*, we can try it ourselves." He also repeated the familiar statement: "The King shall sue in his own Court where he pleases."¹ As to Parliament, he said: "The King shall not sue by petition there about a matter which concerns himself."

¹ This seems to have been the true ground of the jurisdiction. A judgment given in Chancery on a *Scire facias* to have execution on a recognisance was taken into the

King's Bench on a writ of Error, and there reversed in the 14th year of the reign of Elizabeth. *Dyer*, 315 (100).

Robert Thorpe was, however, very persistent, and cited in support of his own contention a case which he described as the case between Little Yarmouth and Great Yarmouth, saying that the suit was made in Parliament to reverse the grant and the King's charter.¹ As to this Parning remarked: "That was between party and party, and it was sued by petition in Parliament, and was adjourned into the King's Bench."

The case of Little Yarmouth and Great Yarmouth cited in support of the plea.

It was, perhaps, unnecessary for the Chancellor to consider this case in greater detail, because it may be shown to have had practically no relation to that of the Burgesses of Wells, but he might have pointed out, firstly, that it was not a suit to reverse, repeal, or revoke a charter, and, secondly, that it was not commenced by petition in Parliament. There can hardly be a doubt that it is the case which is found in the King's Bench in the first and second years of the reign of Edward II. and on subsequent rolls of Parliament.

There was very lengthy litigation, the points of which become sufficiently clear by comparison of the *Placita coram Rege* of Michaelmas Term in the second year of the reign of Edward II., with the Rolls of Parliament of the eighth year. In the latter year the King's lieges of Great Yarmouth presented a petition to the King and his Council.² It was to the effect that they had for six years had pending, in the King's name, a "Writ of Forstalment" in the King's Bench, that judgment had been delayed, and that the matter had been adjourned into Parliament by writ under the "Targe," and therefore they prayed that the Justices might proceed to judgment.

The latter case examined in detail.

In the first instance, therefore, the cause was one

¹ Report, below, p. 110.

² *Rot. Parl.*, 8 Edw. II., No. 47 (M. 9). (Printed, Vol. I. p. 300, b.). The heading is "*Coram Magno Concilio*." As to the

use of the words, Council, Great Council, Whole Council, Parliament, Full Parliament, &c., see Pike's *Constitutional History of the House of Lords*, 43-53, &c.

which had commenced in the King's Bench, and had been adjourned into the Parliament, and not one which had commenced by petition in Parliament and been adjourned into the King's Bench.

If now we refer back to the roll of the King's Bench of six years earlier date,¹ we find the proceedings on this "writ of forstalment." A great number of persons were attached to answer the King. His father (Edward I.), it was said, had granted by charter to the Burgesses of Great Yarmouth that all merchandises brought to the port of Great Yarmouth should be unladen and freely bought and sold at the town of Great Yarmouth, and not elsewhere within the port, and without any forestalling or brocage. The defendants were, nevertheless, in the habit of unlading, buying, and selling merchandise brought into the port, at Little Yarmouth and Gorleston.

The defendants pleaded that they did not unlade any of the greater merchandises, such as lead or iron, &c., but only the lesser merchandises, such as fish or salt, &c., which they had a right to buy, sell, and unlade by prescription, because Little Yarmouth and Gorleston were Ancient Demesne. For the King, however, it was replied that when the same matters were in dispute before Justices of Oyer and Terminer in the reign of Edward I., the same plea of Ancient Demesne and prescription was made and subsequently abandoned, and that an agreement or composition between the *Communitas* of Great Yarmouth and the men of "Luthing-lond" (Lothingland, which included Little Yarmouth and Gorleston) was afterwards pleaded, and was found by a jury to be not the deed of the *Communitas* of Great Yarmouth, and not sealed with its seal. Judgment was therefore prayed whether the defendants could now claim by prescription.

After this, delay follows delay, by reason of successive

¹ *Placita coram Rege*, Mich. 2 Edw. II. Ro. 103.

writs from the King under the Privy Seal, until at last, by writ dated the 16th of May in the 6th year of the reign, the Justices are commanded to respite the parol by continuance to the next Parliament. In one of these writs, dated the 13th of July in the 3rd year of the reign, it is directed that the respite is to be until the arrival of John de Bretagne, Earl of Richmond, who is expected to arrive shortly in England.

This brings us to another phase of the proceedings in Parliament. The petition of the Burgesses of Great Yarmouth to have judgment pronounced, is closely followed, on the Roll of Parliament, by a petition from the Earl of Richmond.¹ He alleged that Little Yarmouth and Gorleston, which were of the Ancient Demesne of the King, had been granted to him in fee tail (the reversion being to the King) together with a fair and market, and all other franchises which had been previously enjoyed by John de Bailliof. He represented that he was grievously disturbed by the people of Great Yarmouth, who were impleading some of his people of Little Yarmouth and Gorleston, in respect of some of these franchises which properly belonged to him, and which greatly affected the estate and right of the King and his Crown. The people of Great Yarmouth, he said, were suing in Parliament to have judgment on their plea, which had been commenced without notice either to the King or to himself, and such judgment could not pass without damage and disherison to the King and his Crown, or without impairing his own rights and franchises. He therefore prayed that the King would command that, before such judgment were given, the right and the estate of the King and of his Crown, of himself, and of all others who were affected, might be tried by some Sages of the King's Council, and that due remedy might be provided.

¹ *Rot. Parl.*, 8 Edw. II., No. 49. (Printed Vol I. p. 301.)

The petitions both of the Earl and of the people of Great Yarmouth were heard before the whole Council. At the instance of the Archbishop of Canterbury and others of the Council, certain representatives of Great Yarmouth consented, so far as they had power, that there should be an adjournment into the King's Bench, to the Quinzaine of Michaelmas, for the rendering of judgment on the matters mentioned in the petition, on condition that in the meantime the King should send some of his lieges to Great Yarmouth and Little Yarmouth with power to enquire as to forestallings, and as to differences and dissensions arising on either side, and to report to the King what they found and did. The Commissioners were also to have power to hear and determine all trespasses affecting particular individuals of either Little or Great Yarmouth.

It was afterwards agreed by the whole Council that four Commissioners named should be appointed for the purpose.

If now we turn once more to the King's Bench Roll, we find that the cause was "readjourned" into the King's Bench. We find also the enrolment of a writ to the Justices of the King's Bench (dated the 8th of October in the 9th year of the reign). It is therein recited that it had been agreed in the last Parliament (of the 8th year) that the parties should be adjourned into the King's Bench to the Quinzaine of Michaelmas, that in the meantime the Bishop of Norwich and the Treasurer¹ were to betake themselves to the spot in order to allay the dissensions which had arisen, and that they had so betaken themselves, but had not succeeded in effecting a complete pacification. The Justices were, therefore, to adjourn the parties to the following Quinzaine of Easter, with a warning to appear at the next Parliament which might be summoned in the meantime,

¹ These were not the persons originally named.

and were to bring thither the record and process of the whole matter.

After several delays another writ (dated the 28th of May in the 11th year of the reign) comes to the Justices of the King's Bench, directing them to proceed without delay in the plea pending in that Court touching the "*forstallamentis, abrocamentis, et aliis transgressionibus diversis*." Then at last we arrive at the judgment, which was given in the King's Bench, and was in the following form :—

"And because after inspection, and frequent recital, and diligent examination of the record and process aforesaid, and after discussion of the matter on both sides, and after consultation with the Justices of the Common Bench, the Barons of the Exchequer, and others of the King's Council, it appears to the Court that suit in this case belongs to the men of Great Yarmouth, to whom the King granted the franchises aforesaid by his charter, and to whom the damages belong, if any there be, rather than to the King (though the King may join himself with them, in such suit, for contempt, &c., if he be pleased so to do), therefore let nothing be done in respect of this process at present, &c., saving always the right of the King when he shall be pleased to speak thereof." ¹

This case was then, as pointed out by Parning, the Chancellor, quite different from that of the Burgesses of Wells, but more different in some respects, and less different in others than would appear from his words. It was not, as he said, between party and party. The prosecution of the suit was technically in the King's name, and the suit came to an end because the Judges held that it should have been prosecuted rather by the Burgesses of Great Yarmouth than by him. On the other hand, although two charters were

It was not strictly applicable.

¹ All this appears on the Roll of *Placita coram Rege*, Mich. 2 Edw. II., already cited.

mentioned, there was no suggestion from the beginning to the end of the proceedings that either should be revoked. The fact that the cause between Great Yarmouth and Little Yarmouth was brought into discussion at all seems to show that the law as to the mode of dealing with charters improperly granted was not yet quite definitely settled.

Plea to the writ: the Yarmouth case again cited.

When the Chancellor had disposed of the question of jurisdiction, Robert Thorpe, the counsel for the Burgesses of Wells, attempted to show that the writ was bad. The proper mode of proceeding, he said, was by writ of *Venire facias*, and not by writ of *Scire facias*, as the suit took its origin from a deceit, in that the charter had been granted without the previous issue of a writ of *Ad quod Damnum*. Parning remarked that a *Scire facias ad audiendum errores* was good. Robert Thorpe argued that error could be assigned only in respect of matters appearing by record, that the charter itself was recorded in Chancery, and was technically good, and consequently that no error could be shown in relation to it. As to this, Parning replied that the writ of *Ad quod Damnum*, duly issued and returned, and the charter granted, constituted but one record, and that if the writ, which was the proper foundation of the grant, was wanting, all was done in error. Robert Thorpe maintained that the absence of the *Ad quod Damnum* was immaterial, unless it could be shown that the grant of the charter was to the King's damage, which was a matter to be tried after issue joined; and again he cited his favourite case of the people of Great and Little Yarmouth, in which he said the writ employed was a *Venire facias*. The Chancellor did not correct that statement, though he might have observed that the process by which the men of Little Yarmouth were brought into Court was really a writ of attachment.¹ He contented himself with the words "Answer; we adjudge the writ to be good."

¹ *Placitu coram Rege*, Mich., 2 Edw. II., as above.

Robert Thorpe then attacked the writ at another point. He said the Burgesses of Wells had a Mayor, in whose mouth a defence would lie to save their franchises, and that the Mayor had not been named in the writ. On this there was some argument between the counsel on the two sides, Robert Thorpe again citing a case which was not strictly applicable, and endeavouring to show that as a *Quo Warranto* would have to be brought against the Mayor and Burgesses, so must a *Scire facias* to repeal the charter. William Thorpe pointed out the distinction between the two modes of procedure, that by *Quo Warranto* being founded on a definite claim of a franchise by parties in possession, and therefore being necessarily in accordance with the claim. The Chancellor then decided this last plea to the writ as follows: "If he were now to bring a writ against the Mayor and Burgesses, the suit would affirm that there is a Mayor when there ought not to be one. No one shall be a party but those to whom the grant was made, and the grant was not made to the Mayor; wherefore he shall not be named; therefore answer."

A second plea to the writ: the writ held good.

Counsel for the burgesses had now come nearly to the end of his dilatory tactics. He had, however, one resource left. The King need not be answered, Robert Thorpe said, because he was not apprised of the cause upon which he founded the suit—of the damage to himself and his people—by suit of a party, or by indictment. "You have been told," said the Chancellor, "that the King is apprised by a record of the Exchequer, which shall be caused to come, if you will deny it; therefore answer."

End of the dilatory pleas.

Robert Thorpe had now to address himself to the action on its merits. William Thorpe must already have counted, because the plea to the count, if there had been one, would have preceded pleas to the writ. It has, however, seemed best in giving a full description of the case from both report and record, to dispose

of the dilatory pleas first, and so to bring together afterwards the substance of the matters in dispute, as they appear upon the record.

The form
of the
pleadings.

The statement of the case for the King is, in the record, put into the mouth of "John de Clone, who sues " for the King," just as the counter-statement of the burgesses is put into their own mouths. It must not be supposed that John de Clone was Attorney-General acting as counsel. There was no such officer at the time. John de Clone was the King's attorney in the Court of Common Pleas, while John de Lincoln was the King's attorney in the Court of King's Bench. Both had been appointed some four years before to their respective offices.¹

John de Clone did not really plead for the King any more than the burgesses pleaded for themselves. According to the record, John de Clone says (*dicat*) that which has to be said on behalf of the King. According to the record, the burgesses themselves say (*dicunt*) that which has to be said on their own behalf. This is, however, merely the formal mode of expression, according to the practice of the Courts. It is always the party himself, who in the record pleads or says that which has to be pleaded or said; but when the King is a party, he cannot, from his exalted position, be made to say or plead anything even formally in his own person, and his pleading is always attributed to the attorney "*qui sequitur pro domino Rege.*" We know from the report that William de Thorpe (who was now one of the King's Sergeants, and who afterwards became Chief Justice of the Court of King's Bench, but incurred forfeiture for malpractices) was on this occasion counsel for the King, and that Robert de Thorpe (who afterwards became Chief Justice of the Court of Common Pleas) was counsel for the burgesses.

The case
for the
King in

The count, declaration, or rather assignments of

¹ *Rot. Lit. Pat.*, 12 Edw. III, part 2, m. 8, and m. 81.

error, on behalf of the King, as recorded, were to the following effect:—Whenever the King grants any franchises to any one, and sends his grant into the Chancery to be executed and put into the form of a charter, a certain mode of proceeding is requisite, which it has always hitherto been the custom to observe. Inquisition must first be made by writ of *Ad quod damnum* and other lawful means, as to whether the grant or charter will be to the damage or prejudice of the King or others. By this means it must be made clear to the Court of Chancery whether the grant ought to be executed or can be rightly permitted, because the King is bound to maintain to the utmost of his power the rights of his Crown unimpaired, and, above all, not to lessen them in any way to the prejudice and damage of others of his people. As, in the present case, this process had been omitted, and the Court had not been informed whether the grant would be to the damage or prejudice of the King or any of his people, and could not know whether it rightly ought to be executed or permitted, and had nevertheless sealed the charter of liberties to the burgesses of Wells, and allowed the charter to issue, the Court had erred in many respects.

the form
of assign-
ments of
error:
omission
of the pro-
cess of *Ad
quod
damnum*.

It was further alleged, on behalf of the King, that the Bishop of Bath and Wells held the town or vill of Wells of the King *in capite*, as the right of his bishopric, and that all the burgesses were his tenants, and many of them by knight-service. Not only was the grant of exemption from toll, passage, &c., manifestly to the damage of the King, but the privilege that the burgesses might elect and create among themselves mayors, bailiffs, constables, and coroners, was such as the royal discretion did not allow to be enjoyed by any but the immediate tenants of the King. The exemption from works on castles, walls, &c., would, if allowed to be in force, necessarily have one of two effects: Either it would exclude the King from those royal subsidies

Error as-
signed in
relation to
the several
points of
the charter.

throughout the whole county, or it would throw the burden previously borne by the burgesses on to other persons of the county, because such subsidies are so indivisible that they cannot either remain in part or be extinguished in part. The Court had therefore erred by proceeding without due caution in sealing the charter, because without consideration of these facts.

Again, the Bishop of Bath and Wells enjoyed, in virtue of royal charters, various franchises within the vill or town of Wells—such as a Hundred Court to be held once in every three weeks, and the cognisance of certain pleas there, fairs, markets, toll, *team*, *infangenetheof* and *utfangenetheof*, and the fines and amercements of all his tenants arising in any of the King's Courts. These privileges were of value, as shown by the amount paid into the Exchequer during one vacancy of the bishopric, when the accountant answered for 96*l*.¹ for pleas and perquisites of Court, of which the greater part was from Wells and the franchises mentioned. The burgesses were bound to pay to the Bishop one hundred marks *per annum* for the issues of these franchises, in accordance with an agreement made between them and him. This sum devolved to the King during every vacancy of the bishopric. The charter would thus have the effect of depriving the King, upon every voidance of the see, and each bishop, while occupying the see, of the profit. The Court of Chancery had therefore erred in the making and in the issue of the charter to the grave damage of the King and to the prejudice of the Bishop.

Again, the grant in the charter that there should be one gaol in the borough, and that the burgesses should have the keeping of it, was to the prejudice of the King because he had a gaol at Somerton (like Wells, in the county of Somerset), the keeper of which ought to

¹ The actual amount is not correctly stated in any of the MSS. of the report. See below p. 108.

have the custody of all prisoners taken within the county, and rendered for his farm of the keepership 24*l.* *per annum* to the King at the Exchequer. The King would therefore suffer a diminution in the amount of this farm if there were another gaol in the county, and in this respect also the charter was to the prejudice of the King.

Again, the Bishop had the return of all the King's writs, and of summonses of the King's Exchequer to be executed by his officers in respect of all matters touching his liberty there, and the Bishop's attorney accounted to the King, at one account of the Sheriff of the County, in respect of this liberty, for the issues of divers persons of Wells which had been forfeited, to the amount of eighteen shillings. The grant of the return of writs, &c., to the burgesses would therefore have the effect of excluding the King from such profits and issues which were daily arising; and the present and all future bishops would be prejudiced; and the Court had erred in granting the franchises and exemptions contained in the charter, to the damage as well of the King as of others.

On consideration of these errors and others, it was prayed that the charter might be revoked and annulled.¹

The pleading on behalf the burgesses was not a simple joinder in error (*in nullo est erratum*), but a plea dealing with the several assignments of error.

As to the grant of exemption from toll, passage, &c., works upon castles, &c., and all other aids to the King, it was pleaded that they had been exempt, by custom, beyond the time of memory, and that the charter operated only by way of confirmation.

Plea on behalf of the burgesses in answer to the several assignments of error.

¹ The assignment of errors (or as there called of damage to the King) is much more shortly stated, though to the same effect, in the report, pp. 108-110. The evidence

as to the facts appears at greater length in the inquisition subsequently taken, the purport of which appears below.

As to the grant that they might elect a mayor, bailiffs, constables, and coroners, and that they were to have the return of writs and summonses, and execution by the mayor and other officers of the borough, and as to all the other franchises contained in the charter, and in particular as to that of having the keeping of a gaol, it was pleaded that the issues and profits were casual and not annual, and could not be extended or valued. The King might, therefore, grant these franchises, without any inquisition by writ of *Ad quod damnum*, by reason of the plenitude of his royal power, and because the burgesses had made a fine with him for having them, as the King and his progenitors had previously been accustomed to do.

Further, as to the grant of having the keeping of a gaol and of the prisoners who might be taken within the liberty of the borough, it was pleaded that this was rather a charge upon the burgesses than an advantage.

It would therefore be sufficiently apparent to the Court that the grant was not to the damage of the King, and consequently no inquisition upon writ of *Ad quod damnum* was required. Judgment was on these grounds prayed for the burgesses, and affirmation of the charter.¹

Replica-
tion for
the King.

On behalf of the King there was then a pleading by way of replication dealing with the points in the plea of the burgesses one by one. The statement made on their behalf as to the exemptions from toll, passage, works upon castles, &c., that they did not claim any new acquisition by the charter, but that it was merely a confirmation of privileges enjoyed beyond the time of memory, was first answered. This, it was said, was an express confession that the charter could not be of any avail as a title to the exemptions, or as a confirmation,

¹ This pleading (by Robert Thorpe) appears in a somewhat different form and order, though to

the same effect, in the report, pp. 116-118.

unless the burgesses were already possessed of those exemptions. There was no mention of any such possession in the charter, nor had the burgesses in pleading alleged anything to show that the exemptions had been allowed by the King or his progenitors, though they had claimed the exemptions throughout the whole realm. Such an averment, if admitted, would have to be made in respect of all places throughout the realm, and this could not rightly be made; and so the averment in proof of possession could not be admitted, inasmuch as it appeared that the charter could not hold good as for exemptions in possession of the burgesses.¹

As to the plea of the burgesses touching the election of a mayor and other officers, and the return and execution of writs, and all the other franchises contained in the charter (except the exemptions before mentioned, and except the keeping of a gaol), the reply on behalf of the King was that, although the issues might be casual and not annual, and therefore incapable of extent, they might nevertheless be estimated, and enquiry might have been made as to the damage and prejudice to the King, and ought to have been made by the writ of *Ad quod damnum* (the usual process upon like grants as sufficiently appeared in the Chancery), because there was no mention in the charter that the King granted *ex certa scientia sua*.

As to the keeping of a gaol, the grant of which the burgesses alleged to be for the most part a charge rather than a profit, with regard to which no enquiry ought to be made by writ of *Ad quod damnum*, it was replied as follows: inasmuch as the burgesses did not deny that there was a King's gaol at Somerton, and that the keeper paid at the Exchequer a farm of 24*l. per annum* for the custody of all prisoners taken in the county,

¹ The record has unfortunately suffered from time and the injudicious application of gall, and is somewhat illegible in places, but the sense appears to be as stated above.

from which it might be evident to the Court that the grant was to the damage of the King and the prejudice of his farmer, in respect of the portion of the keepership relating to the town of Wells, and to prisoners taken within the liberty of Wells, judgment was prayed for the King that the charter might be annulled.¹

The Burgesses being again and again asked by the Court whether they would say anything further, said nothing except as above, and prayed judgment.

Profert, on the King's behalf, of a certificate from the Treasurer and Barons of the Exchequer: its purport.

After an adjournment to the Quinzaine of Easter *Profert* was made, on behalf of the King, of a certificate from the Treasurer and Barons of the Exchequer sent into the Chancery by the King's command "*et huic recordo consutam.*"

The certificate is still sewn to the record, as it was five centuries and a half ago, and with it the writ by which the Treasurer and Barons were directed to make search and certify. The date of the writ is the 27th of February, in the 16th year of the reign, one month after the commencement of the hearing. The information required was the exact amount for which successive Guardians of the Temporalities answered at the Exchequer in respect of the issues and profits of the Borough of Wells during the vacancies of the Bishopric of Bath and Wells following upon the death of Robert Burnel, William de Marchia, and John de Drokenesford.

In the certificate the information is given for each of the three periods mentioned in the writ, with details of the receipts from every source. Each kind of toll is mentioned separately—*e.g.* from ale and from cheese, from corn in the market, and from cattle and horses at the gate of the pound during fairs. The amounts of the rents of assise and of the perquisites of Courts are also specified.

¹ This pleading by way of replication is represented in the report by the words attributed to W Thorpe, p. 118.

Profert was also made, on the King's behalf, of an Inquisition, taken by command of the King, "*et huius recordo consutam.*" As a portion of the record is somewhat illegible, it is fortunate that the Inquisition and the Commission on which it is grounded are still sewn to the roll, and still perfectly legible. The Commission is dated the 20th of February in the 16th year of the reign, and the Inquisition in return the following first of April.¹

Profert on the King's behalf of an Inquisition taken by his command: its purport.

The Inquisition is to the following effect :—The Bishop of Bath and Wells was lord of the town or vill of Wells, and held it of the King *in capite*, as in right of his church of St. Andrew, Wells, partly in demesne and partly in service. Several tenants there held of the bishop by knight-service. The Bishop had in virtue of various royal charters, or by prescription, *tol*, *team*, *infangenetheof*, *utfangenetheof*, etc., a Hundred Court to be held every three weeks, and the return and execution of the King's writs and mandates, and of summonses of the Exchequer. He had cognisance of pleas of Covenant, Debt, and Trespass, and of pleas by Writ of Right touching tenements in the vill. He had all profits arising from these franchises, and customs, and they were worth to him, in some years, 100 marks. All these profits were taken by the King during a vacancy of the see, and would, for the most part, be lost to the Bishop during plenarty and to the King during voidance, if granted in accordance with the terms of the charter. The Bishop had also, in Wells, other tenants for life or at will, whose rents were worth forty shillings; and the tenants made fine to the King for their lands during the vacancy of the see. The Bishop had by charter fines for amercements, trespasses, and *licentia concordandi* from all his tenants, and from all the men of his lands and fees, made in any of the

¹ On the Monday after the Annunciation of the Blessed Virgin Mary, or the next Monday after

the 25th of March, which in this year fell on Monday.

King's Courts, or before the Clerk of the Market, or before the Steward and Marshal of the King's Household. During a vacancy of the see, the King would lose all these profits, should the burgesses have cognisance of pleas in the borough, and execution by their mayor and bailiffs. Twelve burgesses and the rest of the community of Wells had the keeping (*custodiam*) of the town for a certain number of years, in virtue of an indenture made between them and the bishop, for which, and for the profits issuing out of the town, they paid the bishop 100 marks sterling *per annum*.¹ The present King granted to the present Bishop that the burgesses, as his free tenants, should be quit of toll and picage, and have other exemptions throughout the realm. The grant made in the charter to the burgesses that they should not be placed with men from without the borough, and that men from without the borough should not be placed with them, on assises or juries, was greatly to the prejudice of the Crown, and of the King's dignity, as well as to the prejudice of many of the people, because it would give the burgesses a pretext not only for arresting and passing judgment on strangers passing through, but even of putting them to death. It was notorious that such evils had already come to pass in the town under colour of the charter, and so long as it remained in force, the burgesses could not be convicted of these misdeeds and wrongs. Therefore the King ought not in any wise to permit or grant such privileges contrary to his own estate and dignity. Moreover the King, as well during time of plenarty as

¹ It will be observed that the burgesses did not hold the borough in fee farm of the Bishop, much less of the King. It was adjudged, at a later period, when the word "corporation" was in common use, that if the King give land in fee farm "*probis hominibus villa de Dale*" it is a good incorpora-

tion, as it is also if the land be so given "*Burgensibus, civibus, et communitati*," and in virtue of such names of corporations, they may have action in respect of matters touching their farm, &c. Y.B. Trin., 7 Edw. IV., No. 7 (fo. 14.)

during time of vacancy of the see, would lose issues forfeited by the burgesses, which in ordinary years were of the value of twenty shillings, and during time of vacancy would lose fines and amercements of the value of one hundred shillings *per annum*.

To all this no further answer was made on behalf of the burgesses than that contained in their plea.

There was then an adjournment to the following Michaelmas Term.

On the appearance of the parties in the Chancery, it was again asked whether anything more would be said for the burgesses. The answer was "No;" and judgment was prayed in their favour.

Then followed the judgment in these terms: "Because
 " after view and examination of the Certificate and
 " Inquisition aforesaid, it appears to the Court by the
 " evidences therein contained, and for other reasons
 " previously alleged, that the charter was granted to the
 " damage and prejudice as well of the King as of the
 " Bishop and others, and that, inasmuch as there is no
 " mention in it that the King has been informed that
 " such a grant might be made without damage and
 " prejudice to him and others, he has been deceived in
 " making the grant of the charter, therefore it is ad-
 " judged that the charter be revoked and annulled.

Judgment:
the charter
to be re-
voked.

" Further, it is commanded unto the Sheriff of Somers-
 " set that he do go into such places in his bailiwick as
 " shall seem to him expedient, and there cause public
 " proclamation of the fact to be made, and that he do
 " distrain the burgesses to bring the charter before the
 " King into his Chancery there to be given up and
 " cancelled."

The
charter
brought
into the
Chancery
by the
Burgesses
and can-
celled.

Afterwards, the record continues, the burgesses came to the Chancery, bringing the charter with them, and they delivered it to the Chancellor to be cancelled and annulled; and so it is cancelled and made of no effect (*damnatur*) in the Rolls of the Chancery.

It had been regarded with disfavour by the Bishop and by the County at large.

It is evident from the tone of the Inquisition that the grant to the Burgesses of Wells was not regarded with favour by the inhabitants of the County of Somerset in general, from amongst whom the Sheriff summoned the jurors.¹ Nor was it altogether agreeable to the Bishop, although, as Robert Thorpe remarked, he was not a plaintiff in the cause.² The jurors, as just shown, stated that many evils had already arisen through the jurisdiction given to the burgesses by the charter. The Bishop, as soon as judgment had been rendered, prayed to have the record and process exemplified. He succeeded in having the exemplification made for his own benefit, though there was to be no enrolment on any roll of Chancery except the separate record from which the foregoing extracts have been made.³ Both the men of Somerset and the Bishop of Bath and Wells thought, no doubt, that their rights were invaded, but they were, perhaps, a little jealous, like other inhabitants of counties, and other bishops, of the growing power of the towns. The burgesses of Wells had been ill advised when they obtained their charter without the previous issue of a writ of *ad quod damnum*, but their desire to enjoy the particular privileges granted, or most of them, at any rate, was not by any means so monstrous as their adversaries represented. There were many precedents for the grant of similar liberties to Bishops, Abbots, Cities, Boroughs, and even private individuals; but the burgesses of Wells had the misfortune to have a mesne lord between themselves and the king.

Its provisions were, nevertheless, not in themselves unreasonable.

From the point of view of the Bishop of Bath and Wells, it was very wrong that the burgesses of Wells should enjoy certain privileges which, according to the Inquisition, he ought to enjoy himself. Even from a modern point of view, an arbitrary transference of the

¹ Writ to the Sheriff attached to the record.

² Report, p. 120.

³ The record *ad fin.*

Bishop's privileges and jurisdiction (if they were really his), either to the burgesses or to any other transferees, without compensation, would appear to be unjust. The contention, however, that in no circumstances ought the advantages mentioned in the charter to pass from the King to his subjects, does not seem to be in accordance with the ordinary practice of the period. It is, indeed, inconsistent with the privileges claimed by the Bishop of Bath and Wells himself, and with innumerable instances to be found in the Charter Rolls and in the *Placita de Quo Warranto* before Justices in Eyre.

Exemption from toll, pontage, passage, stallage, pedage, and the like, granted to various religious bodies, was by no means uncommon in earlier charters. King John, in the first year of his reign, granted and confirmed to the Knights Templars, among many other privileges, that they should be quit of all works upon castles, parks, bridges and the building of the king's houses, as well as of all toll in markets and for passing over bridges, roads or the sea, throughout the whole kingdom and throughout all the king's lands in which he could grant franchises.¹ The Knights Hospitallers also enjoyed similar privileges.²

Similar grants in other charters were not uncommon. Instances: to the Knights Templars and Hospitallers.

When thirty nuns of Amesbury, on account of the turpitude of their lives, the dissolution of their Order, and the scandal which was bruited abroad, were removed from their monastery, by command of the Pope, and certain nuns of Fontevrault were introduced in their places, the latter had a grant of various possessions, and various immunities. They were to be quit of all works on castles, houses, walls, parks, fish-ponds, bridges and ditches, and to be quit for ever, as well within the seas as beyond sea, as well by land as by water, of toll, passage, pontage, lastage, stallage, and

To various Religious Houses.

¹ *Rot. Chart.* 1 John, pt. 1. m. 35 (printed pp. 1, 2).

² *Ibid.*, m. 17 (printed pp. 15-16).

generally of all things, in all manners, which appertained to the King, except only jurisdiction over life of member.¹ This last was a common reservation.

The Abbot and monks of Crendon were privileged in like manner.²

The Abbot of Westminster was, late in the reign of Edward I., summoned to answer by what warrant he claimed to have, among other things, pleas of the Crown, a market, a fair, toll, gallows, chattels of persons condemned and of fugitives, a free prison, fines, ransoms, and amercements of his tenants, return of the King's writs, pleas *de vetito namio*, view of frank-pledge, the exaction of amends where the assise of bread and ale had been broken, and a coroner in Westminster and several other places.³ He produced a charter from Henry III., including free customs and exemptions, with a grant of *soc* and *sac*, *tol* and *team*, *infangenetheof* and *utfangentheof*, and money due on escapes from prison, murders, larcenies, and forestalling. He maintained that he had jurisdiction in pleas of the Crown by virtue of the grant of *infangenetheof*. He also produced another charter of the same reign, of which there had been *inspeximus* by Edward I. himself, in which the Abbot had grant of all fines on his own men imposed for any cause and before any of the King's Justices, together with return of the King's writs. He claimed a market at Staines by prescription. He produced a charter from Henry III., confirmed by Edward I., granting him certain privileges in his fair at Westminster, and another granting him a fair at Staines. He also produced a charter from Henry III., granting that when any men were arrested on the land or within the liberties of the Abbot for any trespass for

¹ *Rot. Chart.* 1 John, m. 20 (printed pp. 13-14).

² *Ibid.*, pt. 2. m. 13 (printed p. 46).

³ *Eyre Roll*, Middlesex, 22 Edw. I. Ro. 89 (printed *Placita de Quo Warranto*, 479-489).

which they ought to be imprisoned, they were to be kept in the Abbot's prison until judgment according to the custom of the realm; and if any of his men were arrested without his lands, fees, or liberties, for any trespass, they were to be given over to the Abbot's bailiffs to be kept in like manner. On that ground he claimed to have a free prison at Westminster for all his men wheresoever taken.

It was held that all the Abbot's privileges were duly established, except only those of having a fair at Westminster, a prison, and a coroner. As to the fair at Westminster, judgment was prayed for the King on the ground that the grant of certain accessories to a fair was not the grant of the fair itself, and that nothing had been shown to prove the express grant of the fair. In relation to the prison also judgment was prayed on the ground that there was no express mention in the charter of a free prison for the Abbot, and also on the ground that prisoners taken in any other place than in Westminster should, according to the custom of England, be imprisoned in the county in which they might happen to be taken, whereas the Abbot was claiming that his men wheresoever taken should be conducted out of such county and imprisoned at Westminster. As to the Abbot's claim to have a coroner, judgment was also prayed, on the ground that such a privilege could not be had or claimed by prescription, because it was attached to the Crown, from which it could not be separated except by some deed of the King or of his predecessors.

Judgment on these points was deferred, but it was not disputed that the right of having a prison for persons taken within a particular liberty, and of having a coroner might be granted by charter.

Private individuals also sometimes enjoyed a portion of the coveted exemptions. Thus Hugh Oysel of Ypres, a Flanders merchant, whom the King recognised

To private
indi-
viduals.

as his citizen of London, and all his goods and chattels were to be quit of toll, paiage and lastage, and all other exactions.¹ Baldwin de Beton and his heirs had a charter to be quit of works upon castles, walls, ditches or moats, parks, bridges, and roads, and to be quit of toll, pontage, passage, paiage, lastage, and stallage.²

To various
provincial
cities,
boroughs,
and
towns.

As early as the reign of King John the Citizens or Burgesses of Lincoln had the privilege of pleading only within their own city, except in matters relating to tenures without the city, or to the King's moneyers and officers; they were to be quit of toll and lastage throughout the whole of England and throughout the sea-ports; and they were to have all the franchises and free customs enjoyed by the Citizens of London.³ The Citizens of Norwich had similar immunities.⁴ The Burgesses of Nottingham were to be quit of toll throughout the whole realm.⁵ The Citizens of York were to be quit of toll, lastage, pontage, and passage, throughout England, Normandy, Aquitaine, Anjou, and Poitou, and their ports and coasts.⁶ The Burgesses of Appleby were, in accordance with the grant and confirmation of Henry II., to have all the franchises which the "burgesses" of York had, and were, in addition, to be quit of toll, stallage, pontage, and lastage throughout the whole of England, but with the exception of the City of London, unless the "citizens" of York should be found to be quit there by reason of their franchises.⁷

Various other cities and towns had similar privileges, varying in some of the details. Some also had the right to have a *præpositus* or reeve, and coroners.

¹ *Rot. Chart.* 1 John, pt. 1. m. 21 (printed p. 13).

² *Ibid.*, pt. 2. m. 30 (printed pp. 31-32).

³ *Ibid.* pt. 1. m. 30 (printed p. 5).

⁴ *Rot. Chart.* 1 John, pt. 1. m. 11 (printed p. 20).

⁵ *Ibid.*, pt. 2. m. 22 (printed p. 39).

⁶ *Ibid.*, pt. 2. m. 20 (printed p. 40).

⁷ *Ibid.* pt. 2. m. 19 (printed p. 41).

Among these were Northampton,¹ and Shrewsbury,² each of which boroughs was to elect two persons and to present them to the Sheriff of the county in which the borough was, and the Sheriff was to present one to the Chief Justice at Westminster as the *præpositus*. Each of them also was to elect four coroners or officers to have the custody of the pleas of the Crown.

It was a common practice in the reign of King John to grant to burgesses the same privileges with regard to judicial proceedings as those enjoyed by the citizens of Winchester.³ According to the confirmation of their charter in the 17th year of his reign, none of them were to be distrained without the city, by any one, to pay any debt in respect of which they were not the chief debtors or sureties. None of them belonging to the guild merchant of the city were to plead without the walls except in respect of pleas touching tenures without the walls, and excepting the King's moneyers and officers. In pleas of the Crown they were to acquit themselves in accordance with the ancient custom of the city and not be subject to the wager of battle. All citizens belonging to the guild merchant were to be quit of toll, lastage, pontage, and passage. Right was to be done them in respect of all their lands and tenures within the city, according to its ancient custom; and pleas were to be held at Winchester in respect of all debts incurred (*accommodata*) there.⁴

London had, of course, in most respects, the greatest To
privileges of all the towns or cities. It is not necessary, London.
for the present purpose, to attempt to trace all the stages by which all those privileges were acquired.

¹ *Rot. Chart.* 1 John, pt. 2. m. 14 (printed pp. 45-46).

² *Ibid.*, pt. 2. m. 13 (printed p. 46).

³ *e.g.*, Charter to the Burgesses of Newcastle-on-Tyne, *Rot. Chart.* 17 John, pt. 1. m. 2 (printed p.

219.) See also the petition from the burgesses of Wells, above p. xlii.

⁴ Charter to the Citizens of Winchester, *Rot. Chart.* 17 John, pt. 1. m. 4 (printed p. 217).

For comparison with the charter which the burgesses of Wells obtained and lost, it may suffice to note a few of the claims which the citizens of London put forward when they had to show their title in the Court of the Eyre, held at the Tower of London in the fourteenth year of the reign of Edward II. Some were founded on prescription, some on successive royal charters of which the dates were given.

The citizens of London claimed, by virtue of various charters, that they could elect every year a Mayor out of their own body, and that they could have and hold the Sheriffricks of London and Middlesex upon payment of a certain annual farm to the King. They could make whomsoever they pleased their Sheriffs, and remove the Sheriffs at their pleasure. None of the citizens, except the King's moneyers and officers, were to plead without the walls of the city in any causes but those relating to tenures without the walls. The citizens were to have their Court of Hustings in which attorneys might be made as in the King's Court. Justice was to be done in respect of lands and tenures within the city, and all debts incurred there—according to the custom of the city. The citizens were to be quit of toll, lastage, pontage, murage, and all other customs throughout all the King's lands, as well within sea as beyond sea. Merchants not being of the liberty of the city were not to sell wine or any merchandise by retail in the city. No Justices on the part of the King were to be assigned in respect of any matters arising in the city, except Justices in Eyre at the Tower of London, Justices for the delivery of Newgate gaol, and Justices to correct errors at St. Martin's the Great, unless such matters should concern the King. The citizens might assess and levy tallages for the needs of the city without hindrance from the King or his officers.

The citizens claimed by prescription, or by precedents cited, that their Sheriffs were to have the custody of all

prisoners in Eyre, and that their Mayor and Aldermen were to record *ore tenus* all their ancient customs whensoever and wheresoever called in question before any Justices. They claimed that any one of them accused, in any Eyre, of an offence involving peril of life, could deraign himself by a jury of twelve men according to the common law, or by waging the Grand Law of the city, that is to say thirty-six men, of whom eighteen were to be from one side of Walbrook and eighteen from the other. If accused of an offence involving peril of members, he might acquit himself by waging the Mesne Law of the city, that is to say, eighteen men, to be elected from the two sides of the brook. These wagers of law had been previously allowed by Justices in Eyre, and it was also claimed that they were included in charters to the effect that the citizens were to be judged according to the law of the city. The citizens also claimed, by custom, that even when there was a Court of Justices in Eyre at the Tower of London, they ought not (except in cases of disseisin effected since the summons of the Eyre) to answer therein as to their lands and tenements within the city, unless the cause had first been in the Court of Hustings, and had been removed thence into the Court of the Eyre, on the ground that the person impleaded had vouched to warranty some person from without who held nothing within the Liberty of the City.¹

It cannot then be maintained that the ambition of the Burgesses of Wells to enjoy some of these privileges was unreasonable. They were only unfortunate, as has already been said, firstly in having a mesne lord between them and the King, and secondly in having been advised to attempt the snatching of a charter without the previous issue of the usual writ of *Ad quod damnum*.

The irritation which they naturally felt at the dis-

Unfortunate position of Wells in having a Mesne Lord (the Bishop).

The Bishop fortifies his Palace.

¹ Eyre Roll (Tower of London), 14 Edw. II. Printed *Placita de Quo Warranto* 445 et seq.

appointment of all their hopes was aggravated in more ways than one. They had wished to have their town walled, embattled, and moated. A little before this time the Bishop of Bath and Wells (Ralph of Shrewsbury) had applied for a license to fortify his own Palace with wall, and battlements, and turrets; and he succeeded where they failed.¹ His battlements still remain with a moat around them, as a monument of this memorable struggle of the fourteenth century.

The townsmen band themselves together to resist the Bishop's exactions: riots.

Before the Bishop's fortress could have been completed, however, the people of Wells and their friends made an attempt to gain by force that which they could not obtain by law, and some very serious riots ensued. It will be seen from the proceedings which followed, under a Commission of Oyer and Terminer, how very little freedom was enjoyed by the free burgesses of this free borough of Wells by virtue of their charter from King John, and how completely the charters from Bishops Robert, Reginald, and Savaric were regarded as null.

The ringleader in the disturbances was one John le Kyng. He, with a large number of confederates, agreed to the terms of a conspiracy, in the January following the issue of the writ of *Scire facias* to repeal the charter, and they all bound themselves by oath to each other. Some of the Bishop's men and servants residing in the town, who declined to join the conspirators, were taken and kept in imprisonment, until under duress they bound themselves by obligation to pay certain sums of money.

The Bishop's claims and

The Bishop, it seems, was in the habit of making

¹ *Rot. Lit. Pat.* 14 Edw. III. part I. No. 13. This license must not be confounded with that of Edward I., though both were given in the 14th years of the respective reigns. The license from Edward I. (*Rot. Lit. Pat.* 14 Edw. I. m. 19 *in cedula*, and *Lib. Rub.* 18 among

the Wells Cathedral MSS.) is very similar in form to that from Edward III. Both give power to fortify the "*cimiterium ecclesie*" and the "*procinctum domorum Canonicorum*," but that of Edward III. alone permits the Bishop to fortify the "*procinctum domorum suarum*."

various exactions. He claimed in Wells not only a Court Leet to be held twice a year, and a Hundred Court to be held every three weeks, but also, as lord of the town, a certain Court of his men and tenants to be held twice a year on reasonable summons. There he asserted a right to cognisance of pleas of Contract, Covenant, and Trespass arising within the town. He claimed all, or a portion of the four fairs mentioned in the charters of his predecessors—that held on Saint Calixtus's day, that held on Saint Andrew's day, as well as two days before and after each Feast, that held on the day of the *Inventio Sanctæ Crucis* and its eve, and that held on the day of the Nativity of St. John the Baptist and its eve. From these, which, as we have seen in King John's charter, were (so far as the three first mentioned feast days are concerned) once described as free fairs, he claimed toll, picage, lastage, stallage, and other profits. He also claimed the curious custom called "Tolcestre," which was to have, out of every brewing in the town, five flagons of the best ale for 2½d. the earlier charters.

The conspirators set themselves to resist the Bishop at all points, without discrimination. His right to the Court Leet and the Hundred Court, for instance, was on a very different footing from his claim to the fairs and from his claim to cognisance of pleas in the borough. The men who had joined the league stopped the supply of ale for the Bishop. They forcibly prevented the exaction by him of tolls and customs at the fairs. They prevented the holding of the Court Leet and the Hundred Court. In the case of the court in the borough, or court of the Bishop's men and tenants to be holden in Wells, they went further. When the Bishop's bailiffs attempted to hold it they not only interfered, but set up an independent court of their own, which was held weekly (*de octo diebus in octo dies*), and compelled certain persons whom the Bishop described as his men and tenants, to plead and be impleaded there. From

this cause alone the Bishop alleged that he lost a hundred marks in issues and amercements. The Bishop levied distresses in order to assert his rights and to make good his losses, but the conspirators promptly effected a rescue.

The
Bishop
claims and
recovers
3,000*l.*
damages.

The disturbances lasted from January 1341-2, when the proceedings in Chancery commenced, until May, 1343—seven months after the burgesses had lost their new charter. The Commission of Oyer and Terminer which was called forth by the doings of the people of Wells, bears date the 18th of July, and the hearing of the case was commenced on the 24th of August, 1343. The Bishop laid his damages at 3,000*l.* John le Kyng and the others who appeared, prayed leave to imparl, and having obtained it, disappeared in contempt of the Court. The Bishop then had judgment to recover the amount, but it is extremely improbable that he ever gained possession of it. At his request, however, the proceedings were exemplified, and a contemporary copy (from which the above account has been taken) has been inserted in a Register Book at Wells.¹ The judgment may have been thought conclusive as to the Bishop's rights, but it could be so only against the persons individually named in the record; and as those persons do not include any *persona ficta* of the nature of a corporation, it would not, according to modern ideas, affect the corporation of Wells, if we could suppose one to have been in existence.

Subse-
quent in-
dictments
against the
Bishop
quashed.

It is probable that one more effort was made to dispute the rights claimed by the Bishop. In the following year William de Thorpe (who had been counsel for the King when the charter was revoked in the Chancery) presided in another Court of Oyer and Terminer, when the Bishop was indicted of various felonies, receivings of felons, extortions, and oppressions. It is no longer

¹ *Liber Albus* I. fo. 240 *et seq.*

possible to ascertain precisely what was alleged, because (not improbably at Thorpe's suggestion) the King sent out his Letters Patent,¹ directing that the indictments should be quashed. They were apparently withdrawn from the roll on which they were entered, as the number of skins of which it at present consists is less than that shown by the original numbering.²

One year later the King granted that the Bishop and his tenants and men, as well burgesses of Wells as others, should be quit of toll throughout the whole realm.³ This was, however, but little more than a renewal of a grant made by King John.⁴ So far as the burgesses were concerned, it was rather a humiliation than a triumph, for it merely emphasised the fact that the exemption was not in recognition of their position as burgesses, but was only for the benefit of the Bishop and his men.

The Burgesses were now in an evil plight indeed. They had not only lost the charter granted by Edward III., but the advantages which they were supposed to enjoy under the charter of King John were, except as to the one fair which he had granted to them of his own gift, and perhaps one of the other fairs, and except as to the effect of the words "free borough" and "free burgesses," reduced to a nullity. Still, according to their own ideas, they had fought a good fight. They were in no exceptional position. They had done as other burgesses who had a mesne lord between them and the King had done also, and though they may have been ill-advised as to the particular mode of action, they did at least go to the Chancery and try to obtain a charter which would hold good in law. They did not resort to violence until pro-

The Burgesses of Wells not in an exceptional position: general discontent of burgesses under Mesne Lords.

¹ *Rot. Lit. Pat.* 18 Edw. III., pt. 2, m. 37.

² *Præsentationes et Indictamenta coram W. de Thorpe et J. de Geynesforde*, 18 Edward III.

³ *Rot. Lit. Pat.* 19 Edw. III., pt. 1, m. 13.

⁴ Wells Cathedral MSS. *Liber Albus* I., fo. 9d.

ceedings were taken to wrest from them the instrument for which they had paid. It was a period of the revolt of burgesses against mesne lords, and in particular against ecclesiastical mesne lords. As an ecclesiastical writer afterwards said, "the communities of cities, boroughs, and towns, with unbridled audacity, endeavoured to extort charters and liberties by which they might be made absolutely free from their lords."¹ The revolts of the townsmen at St. Albans in 1326, and at Bury St. Edmunds in 1327, were notable instances.

Wells a typical borough of its kind: its successive charters most instructive.

Whether the mesne lord was Bishop, Abbot, Earl, or Baron, the burgesses were every where discontented; and the history of Wells and of its struggle for independence is a very striking object-lesson to any one who takes a broad survey of the period. It has, indeed, commonly been said that the history of Wells is that of its ecclesiastical foundations, and no one ever stated the proposition so absolutely without qualification as Professor Freeman, or repeated it so often. He chose as one of his subjects "The Special Position of Wells in contrast with other Boroughs."² "Wells," he said, "stands alone, among the cities of England proper, as a city which exists only in and through its cathedral church . . . the franchises of the borough were simply held as grants from the Bishop,"³ and much more to the same effect.⁴ This might perhaps appear to be the fact, if regard were had only to those sources of information with which he was acquainted; but as the burgesses of Wells were, in the reign of Edward III., typical burgesses wrestling with all their might for freedom, so in

¹ Walsingham, *Gesta Abbatum Monasterii Sancti Albani* (M. B. Series) II. 156 (A.D. 1326). I am indebted for this reference to Gross's *Gild Merchant*, I. 91, note 4.

² Publications of the Somersetshire Archaeological and Natural History Society, Vol. XIX.

³ Freeman, *History of the Cathedral Church of Wells*, p. 3.

⁴ *Introductory Discourse on the General Antiquities of Wells*, Somersetshire Archaeological, &c., Society, Vol. XII. p. 6; *Special Position of Wells*, &c., as above, p. 19.

later reigns the charters of the borough are, perhaps, as instructive as any that can be found in relation to the history of boroughs in general.

The blow which the burgesses had received seems to have been almost crushing in its effect for more than a generation. In the reign of Richard II. they obtained a bare confirmation of the charter of King John and that of Edward I., but there is reason to believe that an attempt was made to nullify both on the ground of non-user. It is difficult to reconcile the words of John's charter relating to fairs with the claims of the Bishop, to which the burgesses failed to make an effectual resistance; and, if they paid the tolls exacted by the Bishop at some of their fairs, it is difficult to see what use they were making of the privilege of having those fairs as free fairs in their town.

It was probably for this reason that the burgesses obtained at the beginning of the reign of Henry IV. a new confirmation of their charters with a remarkable addition. The charter of King Henry IV.¹ is in the form of an *Inspecimus* of the previous confirmation by Richard II.,² which was an *Inspecimus* both of John's charter and of the charter of confirmation of Edward I. Henry further granted as follows:—Notwithstanding that the burgesses or their *ancestors* may not hitherto have fully used any one or more of the franchises and exemptions contained in the said charters in any case arising, yet they and their *successors* may in future fully enjoy and use the franchises and exemptions aforesaid, and each of them for ever without let or hindrance from us, or our heirs, or the Justices, Escheators, Sheriffs, or other bailiffs, or ministers of us or our heirs."

Bare confirmation of John's charter and that of Edward I. by Richard II.

Charter of Henry IV.: the "Burgesses and their *ancestors*," and the "Burgesses and their *successors*."

¹ Charter Roll 1 Hen. IV., pt. 1, No. 13, m. 27.

² There is a curious error in the roll, the letter E being substituted for R; but there is no doubt that Richard II. was the king meant, and not Edward II., firstly, because

the name Richard is given in the charter as recited; secondly, because the style is "King of England and France"; thirdly, because in the later *Inspecimus* of Hen. VI. the letter E does not occur in the corresponding place.

Perhaps the most interesting feature of this charter is the use of the word "ancestors" in one place and of the word "successors" in another. The charters of the previous sovereigns (except that of Edward III., which was revoked) having been to the burgesses "and their heirs," the existing burgesses and those who had been burgesses before them could of course be described with accuracy only as the burgesses and their ancestors. On the other hand, it was now seen by the lawyers of the time that if there was to be anything of the nature of a corporate succession, the proper term to use was not "heirs," not perhaps even "heirs and successors," but "successors" alone. The courts were becoming familiar with the use of the word "corps" to designate that which we should now call a lay corporation aggregate; and an Act had been passed, only a few years before, declaring the Statute of Mortmain applicable to the purchase of lands and other possessions to the use of Guilds and Fraternities. It was also provided by a separate clause, that inasmuch as the Mayors, Bailiffs, and Commonalties of cities, boroughs, and other towns, having a perpetual commonalty, are as perpetual as "*gentz de religion*," they are not to purchase to themselves and their Commonalty, under the penalty mentioned in the Statute *de Religiosis*.¹

Charter of
Henry VI.
made in
very
solemn
form: the
"Bur-
gesses and
their pre-
decessors."

It can thus hardly be doubted that the borough of Wells was regarded as being in some sense incorporated from the time of Henry IV., whatever may have been its position before. In the reign of Henry VI. there was again a new charter, which was in the form of an *Inspecimus* of that of Henry IV. (with all its recitals), and of which the conclusion was in very solemn form:—
"We, with the advice and assent of the Lords Spiritual and Temporal in our Parliament held at Westminster in the first year of our reign, do ratify and confirm the charter of our grandfather touching such franchises and

¹ 15 Ric. II. c. 5.

exemptions, together with all other matters in the same charter specified (they being in no way revoked as the charter aforesaid reasonably witnesses) and in such manner as the same burgesses and their *predecessors* have reasonably used and enjoyed the aforesaid franchises and exemptions since the time of the execution of the charter and confirmation aforesaid."¹

The advice and assent of the Lords Spiritual and Temporal forcibly suggests the old formula of the King and his Council in his Parliament, though the Council had now been separated from the Parliament.² It suggests that the case was one of considerable difficulty, and that the charter could not be drawn in ordinary course by the Clerks of the Chancery. For the first time we find the phrase, "the burgesses and their *predecessors*" applied to the burgesses of Wells. We find also that the burgesses were to have only those privileges of which they had actually availed themselves in virtue of the charter of Henry IV. The latter consequently becomes an important landmark in the history of the borough, and may indeed be regarded as a substantively new charter. Under it, as we have seen, the burgesses and their successors were to enjoy all that had been granted by royal charter to the previous burgesses and their heirs. Under the charter of Henry VI. there are no predecessors (as in fact there could not be any) recognised before the time of Henry IV. If the burgesses and their heirs held land they could have held it only as individuals. If the burgesses and their successors held land, they held it, according to modern ideas, as a lay corporation in mortmain. There was now a perpetual succession, which brought the burgesses under the mortmain Act of Richard II.

The charter of confirmation of Henry IV. regarded as a substantively new charter.

We have thus traced the story of the people of Wells

Retrospect of the history of the borough.

¹ Rot. Lit. Pat., 2 Hen. VI. pt. 4 m. 10.

² See Pike's *Constitutional History of the House of Lords*, 280, 291-2.

from the days when they, or some of them, were villeins on the demesne of the Bishop. We have seen them made free, perhaps in the time of Bishop Robert (A.D. 1135 or 1136-1166), certainly not later than the time of Bishop Reginald (A.D. 1174-1191). We have seen how, in the time of Bishop Savaric (A.D. 1192-1205), whether with warrant or without, the town was called a free borough. We have seen how that which purported to be given to the burgesses by their bishops could have been given but to each of them for life, at most, neither the word "heirs" nor the word "successors" occurring in any of the bishops' charters, and the words "for ever" being of no avail to create any inheritance or succession. We have seen how King John gave a charter to the burgesses "and their heirs." We have seen how the burgesses attempted to acquire a new estate (to them and "their heirs and successors") in new franchises in the reign of Edward III. and failed. We have seen how they did acquire a new estate in their old franchises, to them "and their successors" in the reign of Henry IV. And we have seen how this last estate was ratified by Henry VI., in whose charter a clear distinction was drawn between the period before his grandfather's charter and that subsequent to it.

As yet the Burgesses had not a charter of incorporation in express terms.

Here, perhaps, we might leave the "Burgesses of Wells" in the enjoyment of a corporate succession, though they had not even yet had what is technically known as a charter of incorporation. As, however, they did, at a later period, obtain an unquestionable charter of incorporation, and acquired some of the privileges for which they had fought so hardly in the reign of Edward III., the story would, perhaps, not be complete without some indication of the manner in which their final success was achieved.

Their efforts to obtain one opposed by

In the year 1574 we find the Bishop of Bath and Wells (Gilbert Berkeley) much agitated because "the townsmen of Wells have gotten a corporation lately,

whereby, if they shall enjoy the same, they do not only imbecill the Queen's Majesty's grants, and the grants of her Highness's progenitors, but also take away her Majesty's own commodities for ever, and shall thereby take away the liberties belonging to the bishopric." These words occur in a letter written by the Bishop to Burleigh, then Lord Treasurer of England, on the 30th of April;¹ they relate, apparently, to some draft charter of incorporation which had not yet passed the great seal. On the following 7th of February, 17 Elizabeth (1574-5), the Bishop again wrote to Burleigh, saying, "If the townsmen shall enjoy their corporation (as they call it) grounded upon an old [charter] (as they would blind the eyes of the world) but utterly defaced, as it doth appear, by King Edward the Third, they shall work in the end their own destruction." The Bishop also drew a lamentable picture of the poverty of the town. "The mayor that now is," he said, "is not able to give his serjeaunts meat, but they are constrained, notwithstanding their attendance, to seek their meat at home or elsewhere."² From this it would appear that the burgesses were assuming the right to elect a mayor, and were in some way relying upon the revoked charter.

Burleigh referred this second letter to the Attorney-General (Gilbert Garrard) on the 12th of February, in the following terms:—"Praying you to advertise me of your opinion, for that, at my being at Bath in the last Progress, I was myself of the same opinion that the Bishop is."

The Attorney-General probably advised more or less in accordance with Burleigh's views, for on the 28th of February the Bishop wrote thus:—"The townsmen of Wells, perceiving they cannot prevail by law, seek by all sinister means to molest me, and (as I learn) to make a supplication to the Queen's Highness for the

¹ Landowne MSS. "Burghley Papers" (B.M.) vol. xix., No. 8.

² *Ib.* No. 64.

Bishop
Berkeley
in 1574
and 1575.

having of a new corporation only to maintain the name of the Mayor, Recorder [and] two Justices, so that they may have four Justices of the Peace within the town, which thing was never heard of in that town before. They also (as I hear) intend by a multitude to make an exclamation against me and to suborn such matter in malice as they possibly can to discredit me. My humble suit unto your good Lordship is that I may not be evil thought of till I come to my answer, and then I doubt not but by the grace of God I shall so answer them to every point that they shall have small joy of their evil doings."¹

The feeling excited on both sides appears thus to have been not very unlike that which existed in the reign of Edward III., and for a time the result was not very different. On the 1st of June, 1581, however (in the twenty-third year of Elizabeth's reign), Garrard was succeeded by Popham as Attorney-General; and it appears that in the twenty-third year of the reign an offer was made to "Mr. Attorney" by the "Common Council" of Wells of twenty marks and all costs for a new charter.²

Proceedings after his death: information of *Quo Warranto* filed by the Attorney-General, Popham.

In November, 1581, Bishop Berkeley, the great opponent of the townsmen, died. The Attorney-General almost immediately took action which might at first sight appear adverse to the burgesses of Wells, but which, when read by the light of the entry in the Wells books, may be regarded as a step towards obtaining that which they desired. He filed an information of *Quo Warranto* in the Queen's Bench against the "Magistrum et Communitatem Burgi sive Villa de Welles," complaining that without any warrant, authority, or royal grant, they exercised certain franchises,

¹ Lansdowne MSS., "Burghley Papers," Vol. xix., No. 66. I was directed to these important letters by Merewether and Stephens,

History of Boroughs, 1409-1412.

² Books of the City of Wells cited by Merewether and Stephens, 1412.

including that of being one body incorporated by the name of "the Master and Commonalty of the Borough,"¹ &c. There had, without doubt, been a "Master" in the borough long before,² though the right of electing him had not been expressly conferred by any charter, and though there had not been any charter of incorporation recognising the "Master and Commonalty."

The attorney of the "Master and Commonalty," however, appeared on their behalf, and their plea was to the following effect: The town of Wells was of old a borough from time whereof there was no memory to the contrary. During all that time there had been a Master and Commonalty who had been known by the name of the "Master and Commonalty of the Borough or Town of Wells." This had been one body of itself, incorporated in substance and name, and by that name had pleaded and been impleaded, and had had capacity in law to sell, convey, and purchase lands and tenements, goods and chattels. The Master and Commonalty had always had a common seal. They had always had a Common Council consisting of twenty-four burgesses, of whom the Master was one. They had always had a house called the "Common Hall," in which the Master, Town Clerk, and other officers were elected by the burgesses, and in which also members to serve in Parliament were elected on a writ to the Sheriff of Somerset and his precept to the Master and Commonalty. They had always had another house called the "Council House," in which a Court was held, every three weeks, before the Master and the twenty-three "Assistants" constituting the Common Council, or two or three of them, for the determination of all personal actions arising in the borough between the burgesses. All

The "Master and Commonalty" of the borough allowed to be a corporation by prescription.

¹ Queen's Bench, *Placita coram Regina*, Hil. 24 Edw. "Regina," R^e 1.

² At least as early as 1377 (1 Ri-

chard II.), according to passages cited from the Wells City Books by Merewether and Stephens, 766.

these liberties, franchises, usages and customs were claimed as having been in use from the time whereof there was no memory, and as having been confirmed and ratified as well by King John's charter to the same Master and Commonalty as by the several charters of others of the Queen's progenitors Kings of England. By such warrant had they held their franchises from time immemorial, and they had never usurped upon the Queen in respect of any of them.

It will be observed that in this plea no reliance is placed upon any of the charters from the bishops, and that there is no mention of the existence of any guild merchant. Everything that is claimed is claimed by virtue of prescription. King John's charter is silent with respect to the Master and Commonalty, but if the prescription for a Master and Commonalty before his time was good, then possibly it might be said that his charter to the burgesses was a charter to the Master and Commonalty, a corporation already in being.

Had the Attorney-General laid his information in a hostile instead of a friendly spirit, he might have made a very crushing replication. He, however, acknowledged that the statement of facts in the plea was true, and that the Master and Commonalty, and all those whose estate they had, had enjoyed the franchises specified.

The age was one in which the doctrine of corporation by prescription had taken a firm hold of the legal mind, and judgment was naturally given in accordance with the pleadings. It was given after mature deliberation had by the Court with the Queen's Serjeants-at-Law, and with the Attorney-General himself, and was to the effect that the Master and Commonalty of Wells should continue to enjoy their franchises.¹

The questions whether the borough of Wells had already been incorporated, and whether by a definite

¹ *Placita coram Regina*, as above.

name, were thus effectually set at rest, and the ground was well prepared for a new charter. The privileges enjoyed by the old would, of course, be enjoyed by a new corporation. The word "Mayor," it is true, has no place in the proceedings on the *Quo Warranto*, though, if Bishop Berkeley is to be trusted, the title was being assumed, in his time, by one of the burgesses. Still the transition from "Master and Commonalty" to "Mayor, Master, and Burgesses" was not very violent, and might obviously be effected if the proper means were judiciously employed.

In the year 1584 Thomas Godwin became Bishop of Bath and Wells, and he does not seem to have entertained the same feelings towards the townsmen as his immediate predecessor. About four years afterwards a sum of £100 is said to have been paid to a Mr. Godwin (whose relationship to the Bishop, if any, is not stated), for the good will of the Bishop in obtaining a new charter.¹ Popham was still Attorney-General, and there was no longer anything to prevent the burgesses of Wells from attaining most of the privileges which they had coveted since the time of Edward III.

The outcome of these events was that Queen Elizabeth granted two charters to Wells, in the first of which it was declared (according to a common form) to be an ancient and populous town. She "ordained, appointed, declared, and granted" that it should in future be a free city or borough of itself (*de se*), and that the burgesses and their successors for ever should be "one body corporate and politic, in substance (*re*). fact, and name, by the name of "The Mayor, Masters, and Burgesses of the City or Borough of Wells in the County of Somerset," and she "erected, made, ordained, appointed, and declared them to be one body corporate and politic." They were to have a Common Council, of which the constitution was defined.

The good
will of
Bishop
Godwin.

Queen
Elizabeth's
charter of
incorpora-
tion: "one
body cor-
porate and
politic in
substance,
fact, and
name."

¹ Books of the City of Wells, cited by Merewether and Stephens, 1412.

They were to have power to make bye-laws which should not be in any respect prejudicial to the Bishop of Bath and Wells, or the Dean and Chapter of Wells. The Queen had the nomination of the "first and modern" Mayor, and of certain "first and modern Masters," all of whom were afterwards to be elected annually. She also had the nomination of the first Recorder, and of the "first and modern" Common Clerk, *quamdiu se bene gesserint*, and these officers were afterwards to be elected. The Common Council of the city was also to have the power of electing annually such inferior officers and ministers as "The Burgesses or Governors of the City or Borough" had lawfully had, or been accustomed to have before the date of these Letters Patent. The Mayor, Recorder, and one of the Masters were to be Justices of the Peace in the City or Borough with the usual powers of Justices of the Peace. The new corporation was to have all franchises and jurisdictions which "the Masters and Commonalty of the City or Borough of Wells," or the burgesses or inhabitants, or any one of them, had previously had or enjoyed, or ought to have had or enjoyed, by any names or any name of incorporation whatsoever, or by any incorporation whatsoever, or pretext of any incorporation whatsoever, and which had been lawfully used, had, or accustomed by reason or pretext of any charters or letters patent previously made, confirmed, or granted of estate of inheritance to them and their successors by the Queen or any of her predecessors, or any other lord of the City or Borough, or any one else, or in virtue of any prescription or other title.¹

Thus in this new charter of incorporation the particular difficulties relating to the previous status of the borough of Wells, which had evidently been under consideration, were judiciously evaded by a declaration in general terms continuing all lawful privileges, but not determining which were lawful. As to the future

¹ *Rot. Lit. Pat.* 31 Elis., pt. 3, mm. 8-13 (Dated 19 July).

of the Borough there was no longer any doubt, though a special clause still reserved all the rights of the Bishop and of the Dean and Chapter.

By another charter, bearing date a few days later, which the Queen granted to the Mayor, Masters, and Burgesses, they were to have a Court of Record. In this could be held pleas, actions, suits, and demands in respect of trespasses with force and arms, as well as actions on the case, and actions of Deceit, Account, Debt, Covenant, or Contract arising within the city, provided, however, that they were not such as could be sued or determined in the Bishop's Court there. The Mayor, Masters and Burgesses were also to have a gaol, and none of the burgesses were to be placed on juries with men from without the Borough before the Queen's Justices or other officers.¹ It is, however, a significant fact that the four fairs which are mentioned in the charters of Bishop Savaric, and King John, to the Burgesses of Wells, and which were nevertheless claimed (in part at any rate) by the Bishop of Bath and Wells in the reign of Edward III., have no place in Queen Elizabeth's charters. According to the latter of them there were to be two fairs in Wells, each to last three days—one beginning on the Monday after Ascension Day, and the other on the 21st of June.

Her second charter to the corporation, including many of the points for which the Burgesses had struggled in the reign of Edward III.

In the privilege as to juries, and in the grant of the borough or city gaol, we recognise two of the points which were most hotly contested when the charter of Edward III. was about to be revoked. These and a definite constitution, including a Mayor, the burgesses of Wells had at length obtained, after the lapse of nearly two centuries and a half. They had acquired also a criminal jurisdiction in the persons of their Justices of the Peace; and if the jurisdiction of their Borough Court was limited in an undefined manner by the co-existence of the Bishop's Court, it was set on a more definite

¹ *Rot. Lit. Pat.* 31 Elis., pt. 3, mm. 13-15 (Dated 23 July).

footing when their Court was recognised as a Court of Record, and therefore as one of the Queen's Courts.

As in the case of the charter of Edward III., so in the case of Queen Elizabeth's Letters Patent, there was no previous issue of a writ of *Ad quod damnum*. The practice, however, had changed in the interval, and it had become usual to insert in the charters themselves a *non obstante* clause declaring the grant valid notwithstanding the omission of the usual process, as well as a formal clause that it was made upon the Sovereign's "certain knowledge." The *non obstante* clause was inserted in both Elizabeth's charters to Wells, and no question arose as to their efficacy.

I have once more the pleasure of offering my best thanks to the Benchers of the Honourable Societies of the Inner Temple and Lincoln's Inn for the loan of their valuable MSS.

I have also to thank Dr. Jex Blake, the Dean of Wells, for the ready access which he gave me to the interesting Register Books of the Cathedral, and the kindness and courtesy with which he enabled me to consult them at my leisure.

To Mr. Reginald L. Foster, the Town Clerk of the City of Wells, I am under an obligation for the search which he kindly made among the City archives for the charters of the Bishops, and for much useful information.

L. OWEN PIKE.

23 November, 1896.

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THE CHANCELLOR, JUSTICES OF THE TWO
BENCHES, TREASURER, AND BARONS OF
THE EXCHEQUER, DURING THE PERIOD OF
THE REPORTS.

Chancellor.

Sir Robert Parning.¹

Justices of the Court of King's Bench.

During Hilary Term.

Sir William Scot, Chief Justice.²

Sir Robert de Scardeburgh.

Sir Roger de Bankwell.

During Easter Term.

Sir William Scot, Chief Justice.³

Sir Robert de Scardeburgh.

Sir Roger de Bankwell.

Sir William Basset (transferred from the Court of Common Pleas, and re-appointed a Justice of the Court of King's Bench).⁴

Justices of the Court of Common Pleas.⁵

During Hilary Term.

Sir Roger Hillary, Chief Justice.

Sir William Basset.

Sir Thomas de Heppescotes.

Sir Richard de Kellehulle, or Kelshulle.

¹ This Chancellor has, in the profession, been known as Parning for many generations, and it is not for an Editor of the Year Books to disregard the precedents. In some of the Great Rolls of the Exchequer, however, the name appears as Peruyng or Paruyng. The form adopted in Hutchinson's *History of Cumberland* is Parving.

² *Placita coram Rege*, of Hilary Term, where, however, Bankwell's name appears exceptionally once (R^o. 2) in the place in which the name of the Chief Justice is commonly found. He may have acted

as Chief Justice in Scot's absence, but the King's Letters Close are addressed to Scot as Chief Justice (and his fellows) on the 6th of February and on the 20th of February. *Placita coram Rege*, R^o. 21, and R^o. 33, in *cedula*.

³ *Placita coram Rege* of Easter Term.

⁴ *Placita coram Rege* of Easter Term, R^o. 37, where are enrollments of Letters Close, dated 30 March, and of Letters Patent, dated 1 April.

⁵ As ascertained from the "Feet of Fines" of the two Terms.

During Easter Term.

Sir Roger Hillary, Chief Justice.

Sir Richard de Kelleshulle, or Kelshulle (the only Puisne Judge).

Treasurer.

William de Cusance.

Barons of the Exchequer

Sir Robert de Sadington (Chief Baron).

Sir Thomas de Blaston.

Sir William de Stowe.

Sir William de Broclesby.

Sir Gervase de Wilford.

CORRECTIONS.

Page 22, note, for "MS." read "MSS."

„ 68, line 16, *after* the word "was" *dele* the word "not."

„ 106, marginal note, for "King's" read "Common."¹

„ 237, marginal note, *after* the word "Annuite" *add*
 "[Fitz. Graunte, 54]."

„ 271, line 6, *after* the word "tanqe" *dele* the comma.

„ 272, line 14, and line 17, for "plaintiff" read "actor."

„ 287, line 14, for "Regis, nunc" read "Regis nunc,"

¹ It is only from the name of the Judge that the Court can be ascertained. Basset was the Judge according to four of the MSS., and he, though a Justice of the King's Bench in Michaelmas 15, and in Easter 16 Edward III., was a Justice of the Common Pleas in the intervening Hilary Term, 16 Edward III.

HILARY TERM
IN THE
SIXTEENTH YEAR OF THE REIGN OF
KING EDWARD THE THIRD
AFTER THE CONQUEST.

HILARY TERM IN THE SIXTEENTH YEAR OF
THE REIGN OF KING EDWARD THE THIRD
AFTER THE CONQUEST.

No. 1.

A.D.
1341-2.
Account.
Observe
that the
defendant
alleged
that the
plaintiff
had been
outlawed,
on his own
suit, on a
Writ of
Account,
since the
last con-
tinuance;
and the
plaintiff
said that
since that
outlawry
he had
purchased
his charter
[of par-
don] and
had there-
upon sued

(1.) § *William Thorpe* rehearsed how John de Michel-
dever brought a writ of Account against one William,
and at the Octaves of St Michael last past William
came by *Capias* and pleaded to the inquest, and they
have a day now; and we tell you that John who
brings this writ has, since the last continuance,
been outlawed on a writ of Account at the suit of
this same William—(and he alleged in certain when
the Exigent was returned)—and thus he is not in a
condition to be answered; judgment how we ought to
depart.—And the COURT searched and found as *Thorpe*
had said.—*Pole*. We tell you that this suit which
William made was by fraud in order to put John
out of the law; for his writ was sued in another
county; and we tell you that by this outlawry he
can not oust us from this suit, for John has a charter
of pardon, and has sued a writ of garnishment, by
Statute, against William, as you will find by the record
before you—(and he alleged in particular where)—

DE TERMINO HILLARII ANNO REGNI REGIS
EDWARDI TERTII A CONQUESTU SEXTO
DECIMO.¹

No. 1.

(1.) ² § *William Thorpe* rehercea coment Johan de Micheldoure ³ porta bref ⁴ dacompte vers un William, ⁵ et as utaves de Seint Michel dreyn passe W. vient par le *Capias* et pleda al enquest, et ount jour a ore; et vous dioms qe Johan qe porte ceo bref, puis la darein continuance, est utlage ⁶ en bref dacompte a la suyte mesme celui W; et alleggea en certain ⁷ quant lexicgend fut retourne; et issi est il nyent responsable; jugement coment nous devons departier. ⁸ Et COURT sercha ⁹ et trova ¹⁰ com ¹¹ *Thorpe* avoit dit.—*Pole*. Nous vous dioms qe cele suyte qe William fit ceo fust ¹² par fraude de mettre ¹³ Johan ¹⁴ hors de la ley; qar son bref fut suy ¹⁵ en autre counte; et vous ¹⁶ dioms qe par cele utlagerie ne poet il nous de ceste suyte ¹⁷ ouster, qar Johan ad chartre de pardoun, et ad suy bref de garnisement, par statut, vers W., come vous trouverez par recorde devant vous; et alleggea en certain

A.D.
1841-2.
Accompte.
Vide qe le
defendant
alleggea qe
le pleintif
fut utlage,
a suite de-
mene, en
un bref
dacompte,
pus le
dareyn
continu-
ance; et le
pleintif dit
qe [pus]
cele utla-
gerie il
avoit pur-
chace son
chartre, et
sur ceo
avoit sue

¹ The reports of this Term are from the Temple MS., the Lincoln's Inn MS., the Harleian MS., No. 741, and the Additional MSS. in the British Museum numbered respectively 16,560 and 25,184.

² From the five MSS. as above.

³ T., Mieldore; Harl., Michel-dore; 16,560, Michedor; 25,184, Mithedere, instead of de Micheldoure. The word should probably be Micheldever.

⁴ 25,184, un bref.

⁵ T., W.; Harl., William; the name is omitted from L.

⁶ 25,184, utlaye.

⁷ 25,184, Court.

⁸ 16,560 and Harl. departier.

⁹ Harl., ohercha; 25,184, cercha.

¹⁰ Harl., trovera.

¹¹ T., coment.

¹² L., se fit, instead of ceo fust.

¹³ Harl., metter.

¹⁴ Johan is not in Harl.

¹⁵ T., servy.

¹⁶ 25,184, nous.

¹⁷ L., accion.

No. 2.

A.D.
1341-2.
a *Scire*
facias
against
the defen-
dant, &c.—
Quære.

and so every time that he had a day in Court he was within the law, and he still is so; judgment, and we pray that he count against us on the writ on which we were outlawed.—And it was found to be as *Pole* said; but the garnishment is not yet returned.—*Thorpe.* After the plaintiff was outlawed his suit and his action were extinguished; and as to his saying that by Statute,¹ as soon as he had the King's charter, he was restored to the law as if he had not been outlawed, that restitution has not the effect of giving him suit, but operates to make him such an one that he can answer to him who was plaintiff against him; and if William come not to the garnishment John is out of the law as he was before.—*Quære.*—HILARY.—This suit which William made seems malicious; wherefore we will consider.

Account.

(2.) § Account. On the *Capius* being returnable the Sheriff returned that he would produce the body here, and the defendant answered by attorney made by writ, and the warrant was disallowed, and the defendant, being called, came afterwards in his own person.—*Pole* counted against him of a receipt of £50, and as to £40 produced the defendant's deed

¹ 5 Edw. III. c. 12.

No. 2.

ou;² et issi a totes les foitz³ qil avoit jour en Court A.D. 1341-2.
 il fut⁴ a la ley et uncore est; jugement, et prioms qil un Scire
 conte vers nous en le bref en quel nous fumes utlage.⁵ *facias*
 —Et trove fust come *Pole* dit, mes le garnisement devers luy,
 nest pas uncore retourne.⁶—*Thorpe*. Apres ceo qe le &c.—
 pleintif fust utlage sa suyte et saccion fust esteint; *Quere*.¹
 et a ceo qil dit qe par⁷ statut quant il avoit la
 chartre le Roi il fust restitut a la ley⁸ come sil nust
 pas este utlage, cele restitution nest pas⁹ a cel effect
 de lui doner suyte, mes est de lui faire tiel qil purra
 respondre a celui qe fust¹⁰ pleintif vers lui; et sil
 ne veigne pas al garnissement il est hors de la ley
 come avant fust.—*Quere*.—HILL. Ceste suyte qe W.
 fist semble¹¹ maliscieuse;¹² par quei nous aviseroms.¹³

(2)¹⁴ § Acompte. Al *Capias* retournable le Vicounte Acompte.¹⁵
 retourna qil averoit¹⁶ le corps cy, et le defendant re-
 spondi par attourne fait par bref, et le garant fust
 desalowe, et le defendant demande¹⁷ vient apres en
 propre persone.—*Pole* conta vers lui de resceite de *lli*,
 et quant a *xlii*. moustra avant¹⁸ le fet le defendant

¹ This marginal note is from 25,184 alone. In L., and Harl. 741, the marginal note is Acompte; in T. Bref de Acoute; and in 16,560 Acompte ou le pleintif fuit utlage pendant le plee.

² ou is not in 25,184.

³ T., acouter les foitz; Harl., tout le foitz; 25,184, tut le foith; L., tot le fait, instead of a totes les foitz.

⁴ T., qil fust; 16,560, issi fut; L., il fit, instead of il fut.

⁵ 16,560, sumes utlaie, instead of fumes utlage.

⁶ Harl. and 25,184, retournable.

⁷ par is omitted from T. and 16,560.

⁸ The words a la ley are omitted from 16,560.

⁹ T., nust pas este, instead of nest pas.

¹⁰ L., est.

¹¹ 25,184, il semble; L., fut.

¹² 16,560, malvoise.

¹³ Harl., aviserons.

¹⁴ From the five MSS. as above.

¹⁵ There is in L. a marginal note, giving an abstract of the case, which has been injured in binding.

¹⁶ Harl., avoit.

¹⁷ demande is not in 25,184.

¹⁸ avant is from L. alone.

No. 3.

A.D.
1341-2.

by which he bound himself to the account, and as to £10 he tendered suit. And he counted that the receipt was in the county of Stafford.—*Thorpe*. As to the £10, not his receiver as he has counted; ready, &c.—And the other side said the contrary.—And as to the £40, we tell you that we do not admit the date of the deed in the county of Stafford as the deed purports, but we tell you that, on a certain day before the date of the deed, this same plaintiff took us with force and arms and imprisoned us at W. in the county of Nottingham, and compelled us to execute that deed by duress of imprisonment; judgment, whether by that deed he can charge us.—*Pole*. You were at large and made that deed of your own free will in the county of Stafford, where the deed purports to be dated; ready, &c.—*Thorpe*. In prison at the time of the making of the deed, in the county of Nottingham; ready, &c.—*Pole*. We pray a jury from the county of Stafford.—*Thorpe*. The issue is whether he was imprisoned or not; wherefore the jury shall come from the neighbourhood where the imprisonment is alleged.—*HILLARY*. That is true.—And so it was done.

Quid juris
clamat.

(3.) § John de Stonore and his two sons sued a

No 3.

par quel il se¹ obligea a la compt, et quant a xli., il tendist suyte. Et conta qe la resceite fust en le counte de Stafford.—*Thorpe*. Quant a les xli., nient son resceivour come il ad counte;² prest, &c.—*Et alii e contra*.—Et quant a les xlii., nous vous dioms qe nous ne conissons pas la date³ du⁴ fait en le counte de Stafford come le fet purport, mes vous dioms qe, certain jour avant la date de fet, mesme celui nous prist a force et armes⁵ et nous enprisona a W. en le counte de Notingham, et nous fist faire ceo fet par duresce de prisoun;⁶ jugement si par ceo fet nous puisse charger.—*Pole*. Qe vous fustez a large et feites⁷ ceo fet de⁸ vostre bone gree en le counte de Stafford, ou le fet purport date; prest, &c.—*Thorpe*. En prisone a temps de la confeccion de fet⁹ en le counte de Notingham; prest, &c.—*Pole*. Nous prioms¹⁰ pais del counte¹¹ de Stafford.—*Thorpe*. Lissue est le quel il fust enprisone ou noun; par quei¹² pais vendra, &c. ou lenprisonement est allege.—*HILL*. Cest verite.—*Et ita factum est*.

A.D.
1341-2.[Fitz.
Ley, 57.]

(3.)¹³ § Johan de Stonore et ses deux fitz¹⁴ suyerent Quid juris
clamat.

¹ 16,560, soy.² The words come il ad counte are not in L.³ T., dette.⁴ du is from 25,184 alone.⁵ The words et armes are from T. alone.⁶ 25,184, prisone; L., emprisona.⁷ T., faites; 25,184, feistes.⁸ 25,184, par.⁹ The words de fet are from T. alone.¹⁰ Harl., Vous prioms.¹¹ Harl., compte.¹² Harl., qay.¹³ From the five MSS. as above, but corrected by the records, of

which there are two, *Placita de Banco*, Hilary, 16 Edw. III., one E^o. 64, the other E^o. 181. The first ends abruptly with an erasure, and the second seems to be the true record. It there appears that the action was brought by John de Stonore and his two sons, Henry and Edmund, against John de Cotesmor, and Margaret his wife, in respect of messuages, lands, and rent in Brigewell (Brightwell?) and Sotwell (Berks), whereof a note of a fine was levied between Henry son of Robert de Sotwell and the demandants.

¹⁴ All the MSS. of Y.B. files.

No. 3.

A.D.
1341-2.

Quid juris clamat against one John de Cotesmor and Margaret his wife, as tenants for term of the life of the wife.—The husband said; for himself and his wife, that the land was by fine rendered to his wife and her first husband [Robert de Sotwell]¹ and the heirs of their two bodies begotten, and thus she had a fee tail, and against her a writ of Waste did not lie, wherefore they did not understand that for such a tenancy they ought to attorn. And he produced a part of the fine by which Walter Dammory rendered [to Robert de Sotwell and Margaret].—*Stouford*. State her claim with certainty, that is to say, whether there is issue or not; for if there was no issue between the first husband and the wife the tenancy in effect is only for term of life, for which, perhaps, she ought to attorn.—*HILLARY*. They have claimed with sufficient certainty.—*Pole*. We tell you that they held for the term of the life of the wife, as is supposed by the note, on the day on which the note of the fine was levied; ready, &c.—And it was counterpleaded that the averment in opposition to the fine is not admissible.—*HILLARY*. He is a stranger, and your estate may have been changed since the fine, which change he ought not to and can not acknowledge; wherefore, will you have the averment?—The tenants said that Walter Dammory rendered to the first husband and the wife as above, and, in default of issue in tail, with remainder

¹ As appears by the record.

.No. 3.

Quid juris clamat vers un Johan de Cotesmor¹ et Margarete² sa femme,³ come tenantz a terme de la vie la femme.⁴—Le baroun⁵ dit, pur lui et sa femme, qe terre par fyne fust rendu a sa femme et a son primer baroun et les heirs de lour ij⁶ corps engendres, et issi ad ele fee taille, vers qi bref de Wast ne gist pas, par quei il nentendent⁷ pas qe de tiel tenance deyvent⁸ attourner. Et mist avant partie de la fyne par quel W.⁹ rendist.—*Stouf.* Mettes en certain son cleyme, saver le quel il y¹⁰ ad issue ou noun; qar sil ny ad pas¹¹ issu entre le primer baroun et la femme la tenance en effect nest qe a¹² terme de vie, de quel par cas ele deit attourner.—*HILL.* Ils ount clame assetz en certain.—*Pole.* Nous vous dioms qil tiendrent a terme de la vie la femme, come suppose est par la note, jour de la note¹³ leve; prest, &c.—Et fust contreplede qe laverement encontre la fyne nest pas reseivable.—*HILL.* Il est estrange, et vostre estat poet estre change puis la fyne, quel chaunge il ne deit¹⁴ ne ne¹⁵ poet conustre; par quei volez laverement?—Les tenantz disoient qe W.⁹ rendist au primer baroun et la femme *ut supra*, et, pur defaute de¹⁶ issue¹⁷ en¹⁸ la taille, le

A.D.
1341-2.

¹ 25,184, J. de C. The name is correctly given in L., but the other MSS. have homme, instead of Johan de Cotesmor.

² 25,184, M.; L., K. The other MSS. have neither name nor initial in this place.

³ In T. are inserted, after the word femme, the words saver Johan de Godesmore et Margerie sa femme.

⁴ L., Katherine, instead of la femme.

⁵ L., J., instead of le baroun.

⁶ The number is omitted from all the MSS. except L. and 25,184.

⁷ The words par quei il nentendent are from 25,184 alone; the other MSS., et nentent.

⁸ 16,560 and Harl. deive.

⁹ The MSS., A. According to the record it was alleged that this fine was levied by Walter Dammory.

¹⁰ y is from T. alone.

¹¹ 25,184, nul.

¹² a is from T. and L. only.

¹³ The words jour de la note are omitted from 16,560 and 25,184.

¹⁴ Harl., dedit.

¹⁵ The second ne is from Harl. alone.

¹⁶ de is from 16,560 and Harl. only.

¹⁷ issue is from 25,184 alone.

¹⁸ en is omitted from 16,560 and 25,184.

No. 3.

A.D.
1341-2.

to Robert and his heirs; and we tell you that Henry, their cognisor, is son and heir of Robert; so, if he were party to us, he would not be admitted to aver, in opposition to the fine by which his ancestor took estate, a tenancy in us different from that which the fine purports, nor, for the same reason, would one who claims through him; besides, he who had only a remainder could not grant a reversion; and we rest on your judgment as to whether in this case we ought to attorn.—HILLARY. Will you have the averment? for we will not and we cannot adjudge anything until you have either refused or accepted the averment.—The tenants said, as above, that the wife had estate by the fine and had continued that estate, and they said that her first husband had died without issue, and so in a manner she had only a tenancy for her life, and so perchance a jury would say: but since the estate taken by the entail was continued in her she ought not in respect of that tenancy to attorn.—HILLARY. This matter must be tried before we give judgment on it.—The tenants said that they held in right of the wife according to the purport of the fine, and not for life only as was supposed by the note; ready, &c.—And the other side said the contrary.—And, according to HILLARY, the whole matter shall be entered [on the roll], and the whole shall be enquired of.—And on another day the woman was essoined, and the essoin was quashed, and the inquest was awarded.—Look for more afterwards in Trinity Term, when seisin of the land was adjudged.—See¹.

¹ The verdict at *Nisi prius* on the issue joined, was, according to the record, as follows:—"quod predicti Johannes de Cotesmor et Margaretæ, die levationis notæ prædictæ tenuerunt tenementa infra contenta ad terminum vite

"ipsius Margaretæ tantum, sicut per notam prædictam supponitur." The judgment was "quod predicti Johannes, Henricus, et Edmundus recuperent inde seisinam suam."

No. 3.

remeindre a Robert¹ et ses heirs; et vous dioms qe .A.D.
H., lour² conisour, est fitz et heir³ Robert¹; issi, sil 1341-2.
fust partie a nous, contre la fyne par quel son auncestre
prist estat, il ne serra pas resceu daverer autre tenance
en nous qe la fyne ne purport, ne, par mesme la resoun,
celui qe cleyme par my⁴ lui; ovesqe cela, celui qe
navoit forse remeindre ne poet⁵ reversion graunter:
[et mettoms en voz⁶ agardez si en ceo cas devons
attourner].⁷—HILL. Volez laverement? qar nous ne
voloms ne poms rien⁸ agarder tanqe vous eiez ou
refuse ou accepte laverement.—Les tenantz disoient, *ut*
supra, qe la femme avoit estat par la fyne et cele
estat ad continue, et disoient qe son primer baroun
est mort saunz issu, issi en manere nad ele forse
tenance pur sa⁹ vie, et issi par cas pais dirreit; mes
del houre qe lestat pris par la taille est continue en
lui, ele ne deit pas de cele tenance attourner.—HILL.
Il covient qe cest chose fust trie avant ceo¹⁰ qe nous
lajuggeroms.¹¹—Les tenantz disoint qil tiendrent en
le droit la femme solonc¹² le purport de la fyne, et
noun pas soulement a terme de vie come est suppose
par la note; prest, &c.—*Et alii e contra*.—Et tut serra
entre, et tut serra¹³ enquis,¹⁴ *teste* HILL.—Et aultre
jour¹⁵ la femme fust essone, et fust quasse, et lenquest
agarde.¹⁶—*Quære plus postea termino Trinitatis*, ou
seisine de terre fut agarde.—*Vide*.

¹ All the MSS., W.² All the MSS. except 16,560, le.³ The words *et heir* are omitted from 25,184.⁴ *my* is from L. alone.⁵ Harl., *porte*.⁶ L., T., and Harl., *vous*.⁷ The words between brackets are not in 25,184.⁸ L., *riem*.⁹ L., a *terme de*, instead of *pur sa*.¹⁰ All the MSS. except L., *devant*, instead of *avant ceo*.¹¹ Harl., *lajuggerons*.¹² L., 16,560, and 25,184, *solom*; Harl., *solunc*.¹³ *serra* is from L. alone.¹⁴ The report ends here in L., 16,560, and Harl.¹⁵ T., *puis*, instead of *aultre jour*.¹⁶ The report ends here in T., the remainder being from 25,184 alone, which, however, is in agreement with the record.

No. 4.

A.D.
1341-2.
Venire
Facias.

(4.) § A *Venire facias* issued to warn one John to show why he had sued execution on a Statute Merchant contrary to his own deed.—The Sheriff returned that John had nothing wherein he could be warned.—*Thorpe*. You will find that the Sheriff has returned, on this very day, that he has delivered to John the lands which belonged to A. the recognisor; wherefore he can not be heard to say that John has nothing.—HILLARY. The Sheriff has taken that return from his predecessor, for he has returned that his predecessor delivered, &c.—*Thorpe*. We can not have a *Testatum est*, for John has divested himself since the delivery made to him; but we pray that he may be distrained in the lands which were delivered to him.—HILLARY. You shall not have the Distress, for the Attachment is not served.—*Thorpe*. He can not come by any other process.—HILLARY. Every *Venire facias* is in its nature an Attachment, for the party shall be put by pledge; and in a *Quid juris clamat* and in a writ of Deceit, which are writs of *Venire facias*, if the Sheriff return in that manner, the Sheriff shall be commanded to cause him to come by warning in the lands which he had, &c., and so it shall be here.—And note that the clerks said that, on a writ of Deceit, one would have a *Capias* on such a return.—And HILLARY wholly denied it.—And afterwards an *Alias venire facias* issued, that the Sheriff should cause John to come by warning in the lands which were previously delivered to him by execution.

No. 4.

(4.)¹ § *Venire facias* issit de garnir un Johan² pur quei il avoit suy execucion sur estatut marchant contre son fet demene.³—Le Vicounte retourna qe Johan² navoit rien ou estre garny.⁴—*Thorpe*. Vous trouverez qe le Vicounte ad retourne, a mesme cesti jour, qil ad livere a Johan² les terres qe furent a A. le reconisour; par quei il nest pas escotable a dire qil nad rien.—*HILL*. Cel retourn prent le Vicounte de son predecessour, qar il ad retourne qe son predecessour livera, &c.—*Thorpe*. Nous ne poms aver *Testatum est*, qar Johan² sad demys puis la livere fait a lui, mes nous prioms qil soit destreint en les terres queles⁵ furent liverez a lui.—*HILL*. La destresse naverez pas, qar lattachement nest par servy.—*Thorpe*. Il ne poet par autre proces venir.⁶—*HILL*. Chescun *Venire facias* en sa nature est un attachement, qar la partie serra mys par plegge; et en *Quid juris clamat* et en bref de Desceite, qe sont brefs de *Venire facias*, si le Vicounte retourne par la manere, comande lui serra qil lui face venir en les terres queles⁷ il avoit, &c.; et *ita erit hic*.—Et nota qe clers⁸ disoient qe homme⁹ avereit *Capias*, en bref de Desceite,¹⁰ sur tiel retourn.—Et *HILL*, *omnino*¹¹ *dediavit*.—Et puis *Venire facias sicut alias* issit qil lui feist¹² venir en les terres queux¹³ lui furent liverez par execucion a devant.¹⁴

¹ From the five MSS. as above.

² All the MSS. except 25,184, J.

³ demene is from L. alone.

⁴ All the MSS. except L., &c., instead of estre garny.

⁵ T., qe; 16,560, quels; 25,184, queux.

⁶ Harl., avenire.

⁷ 25,184, queux; L., quex.

⁸ 16,560, clerks.

⁹ T., qomme, instead of qe horame.

¹⁰ Harl., Dette.

¹¹ L. *non*.

¹² T., fait; L., 25,184, and Harl., fet.

¹³ T., qil.

¹⁴ The last four words are omitted from Harl.

No. 5.

A.D.
1841-2.
Formedon
in the
Descender.

(5.) § A Formedon was brought in respect of a gift made by one A. to the demandant's father and mother and the heirs of their two bodies begotten.—*Gayneford*. On a former occasion this same demandant brought a writ of Formedon in respect of the same tenements, in this Court, against us, and it supposed that the tenements were given by A. to his father and mother and the heirs of the body of his father begotten, at which time we said that A. did not give, and that he admitted; wherefore he took nothing; wherefore we do not understand that he shall now be admitted to say that A. gave.—*Thorpe*. We now take our action on a different form, and, even though on a former occasion we admitted that A. did not give, if there was such a record (which we have no need to admit) that was only an admission on our part that A. did not give as was supposed by that writ; and now we are supposing another gift which may be consistent with the former admission.—*BASSER*. If you admitted that A. did not give, that relates to all manner of gifts.—*Thorpe*. It does not; for if we had been at issue on the gift generally, the Court would have enquired only specially of the gift supposed by the writ, and the admission did not extend further.—And then *Gayneford* produced a transcript of the record, which purported that the demandant could not deny that A. did not give as he supposed by the

No. 5.

(5.)¹ § Un³ Forme de doun fut porte⁴ dun doun A.D. 1341-2.
 fait a son pere et a sa mere et a les heirs de lour Forme de
 deux corps engendres par un A.—*Gayn*. Autrefoitz doun en
 porta mesme celui forme de doun⁵ de mesmes les descen-
 tenementz, en ceste Court, et supposa qe les tenementz dre.²
 furent donez par A. a son pere et a sa mere et a les [Fitz.
 heirs du corps son pere engendres, vers nous mesmes,⁶ *Estoppell*,
 a quel temps nous deimes⁷ qe A. ne dona pas, quele 214.]
 chose il conisast;⁸ par quei il⁹ ne prist¹⁰ rien¹¹; par
 quei nous nentendoms pas qil serra¹² ore resceu a dire
 qe A. dona.—*Thorpe*. Nous pernoms ore nostre accion
 sur altre forme, et tut conissames altrefoitz qe A. ne
 dona pas, [si tiel record y fuit¹³ (come nous navoms
 pas mestier de conustre) ceo ne fuit altre mes qe nous
 conussames qe A. ne dona pas]¹⁴ come fuit suppose
 par cel bref; et ore nous supposoms altre doun quel
 poet ester ove la premiere conussaunce.—*BASSET*. Si
 vous conussastes qe A. ne dona pas, ceo refiert a ches-
 qun manere de doun.—*Thorpe*. Noun fait; qar, si
 nous ussoms este a issue sur le doun generalment,
 Court nust enquis forsque especialment du doun suppose
 par le bref, et plus avant ne sistent la conissance.
 —Et puis *Gayn*. moustra avant¹⁵ transescript¹⁶ del
 record, qe voilleit qil ne poait dedire qe A. ne dona pas

¹ From the five MSS. as above.

² The words en descendre are from L. and 25,184 only.

³ Un is from 25,184 alone.

⁴ The words fut porte are from 25,184 alone.

⁵ For the words porta mesme celui forme de doun are substituted, in 25,184, the words vous mesmes portastes atiel bref vers nous, et.

⁶ The words vers nous mesmes do not occur, in this place, in 25,184.

⁷ L., desmes; 16,560, deimes; 25,184 and Harl., dymes.

⁸ L., il conust; 16,560, il conis-
 sent; 25,184, vous conussastes, in-
 stead of il conisast.

⁹ 25,184, vous.

¹⁰ 25,184, pristez.

¹¹ In 25,184 the words par vostre
 bref are added after rien.

¹² 25,184, qe vous serrez, instead
 of qil serra.

¹³ The words y fuit are not in L.

¹⁴ The words between brackets
 are not in 16,560.

¹⁵ avant is from 25,184 alone.

¹⁶ T., 25,184, and Harl., transcript.

No. 6.

A.D. writ.—And *Gagneford*, seeing that the opinion of the
1341-2. Court was against him, did not dare to abide judgment, but traversed the gift supposed by the writ.—And the other side said the contrary.

Dower. (6.) § Dower, in the County of Gloucester, where the heir of the husband, namely of E. Boteler, was vouched, &c. in the Counties of Gloucester and Wilts, and other counties; and he came and entered into warranty by virtue of the deed of his ancestor as one who had nothing by descent, and rendered dower.—The tenant said that he had assets by descent in the aforesaid counties; whereupon writs issued to extend the land demanded, and also to the other Sheriffs to enquire of the value.—But first it was adjudged that the demandant should recover against the heir if he had anything, and, if he had not, against the tenant &c.—And now certain of the Sheriffs, namely, those of Gloucester and of Wilts, have returned that the heir has nothing by descent, and the tenant fully admits it; but in the other counties he has assets, and there the demandant has not sued anything, and it is her default.—And, for the vouchee, it was said, We pray a re-extent of the land demanded, for that is extended at £50, which is not worth £20 of rent.—*Derworthy*. So you may say again, and so on, *in infinitum*.—*Thorpe*. No; we pray it now at our peril; and in such a case an *alias* writ has commonly been seen to be granted at the peril of him who prayed it; and it would be too great a mischief, if it were found otherwise than by inquest of office that we have anything by descent, that she should recover

No. 6.

auxi com il supposa par le bref.—Et *Gayn., videns opinionem Curie contra eum*, nosa pas demorer, mes traversa¹ le doun suppose par le bref.—Et *alii e contra*. A.D.
1341-2.

(6.)² § Dowere, en le counte de Gloucestre, ou leir le baroun, saver de E. Boteler, fuit vouché, &c., en les countes de Gloucestre et Wiltes, et altres contes, qe vynt et entra par le fait soun auncestre,⁴ come celuy qe rien nad par descende, et rendi dowere.—Le tenant dit qil avoit⁵ assetz par descende en les avantdites countes; sur quei issist bref⁶ destendre la demande, et auxi⁷ as altres Vicountes denquere de la value.—Mes primes fuit agarde qe la demandante recoverast vers leir sil avoit,⁸ et si noun, vers le tenant, &c.—Et ore les uns Vicountes ount retourne, saver⁹ de Gloucestre et de Wiltes, qil nad rien par descende, et le tenant le conust bien; mes en les altres countes il ad assez, et la ad le demandant rien suy,¹⁰ et cest sa defaute.—Et, pur le vouché, nous prioms un reestente de la demande, qar cest estendu a l¹¹ li. qe ne vaut pas¹² xx¹³ li. de rente.¹⁴ — *Derworthy*. Issi poez vous¹⁵ altrefoit dire, *et sic usque in*¹⁶ *infinitum*.—*Thorpe*. Nanyl; nous le prioms ore a nostre peril; et homme lad bien vieu graunte en tiel cas *sicut alias* al peril celuy qe le pria; et il serroit trop graunt meschief, autrement qe par enqueste de office si trove soit qe nous avoms¹⁷ par¹⁸ descende, qe ele recoversa

Dowere.³
[Fitz.
Dowere,
56; Vou-
cher, 85.]

¹ 25,184, transversa.

² From the five MSS. as above.

³ T., De dote.

⁴ T. and 25,184, pere; L., cosyn.

⁵ L., ad.

⁶ bref is not in T.

⁷ L., issint.

⁸ The words sil avoit are not in T.

⁹ saver is omitted from L. and 16,560.

¹⁰ L., suyte.

¹¹ 16,560, xl.

¹² 25,184, qe.

¹³ L., xl.

¹⁴ The words de rente are from T. alone.

¹⁵ vous is from L. alone.

¹⁶ 16,560, 25,184, and Harl., ad.

¹⁷ 25,184 and Harl., navoms.

¹⁸ T., pas.

No. 6.

A.D.
1341-2.

against us to the value of the extent which is assessed so high.—And afterwards this re-extent was granted to him.—And afterwards *Thorpe* said that, since the Inquest taken by the Sheriff of Gloucester, assets in the same County had descended to the vouchee, and (said he) we pray a writ to the Sheriff of Gloucester, to enquire, since this does not tend to delay for the demandant, because her execution will be stayed until it be enquired in the other counties in which she has not yet sued.—*Derworthy*. The judgment was conditional, that is to say, that the demandant should recover against the vouchee if he had assets, and, if not, against the tenant according to the proportion, and that he should recover over to the value, which condition extends only to the time when the judgment was given, and not to all future time: and, since it is found that he then had nothing, the execution ought to be fulfilled against the tenant by force of the same judgment; and you are not put to mischief if it be as you say, for you can sue to have to the value.—*Thorpe*. I shall never have to the value except of that which has descended since execution had against me; and since the judgment is in its nature that the demandant do recover against the vouchee if he has anything at any time before the execution, the allegation that he has assets is saved to me; wherefore execution shall be had against him in order to save my tenancy, so that I be not ousted without reason.—*HILLARY*. You will have to the value against the vouchee in respect of everything which may have descended to him since the voucher.—*Thorpe*. I doubt it.—*Pole*. Whereas the

.No. 6.

vers nous a la value de lextente¹ gest si haut assise.²—Et puis cele reestente³ luy⁴ fuit graunte. A.D.
.1341-2.
—Et puis *Thorpe* dit qe, puis lenqueste pris par le Vicounte de Gloucestre, assez est descendu en mesme le counte al vouche, et prioms bref al Vicounte de Gloucestre denquere, del houre⁵ qe ceo ne chiet⁶ pas en delaye pur la demandante, qar sa execucion cessera tange enquis soit en les altres countes ou de nad pas unquore⁷ suy.—*Derworthi*. Le jugement fuit condicionel qe la demandante recoverast vers le vouche sil ust assetz, et si noun, vers le tenant solonc la porcion, et il outre a la value, quele condicion sistent forsque al temps del jugement rendu, et noun pas de tut temps a venir;⁸ et, del hure qe trove est qe il adonques navoit rien, lexecucion covynt estre performe⁹ vers le tenant par force de mesme le jugement; et vous nestes pas a meschief sil soit come vous dites, qar vous poez suyr daver a la value.
—*Thorpe*. Jammes naveray¹⁰ jeo a la value forsque de chose descendu puis lexecucion fait¹¹ vers moy; et del houre qe le jugement est en sa nature qe la demandante recovere vers le vouche, sil eit chesqun temps devant lexecucion,¹² moy est salve¹³ dallegger qil ad assetz; par quei execucion se fra vers¹⁴ luy pur salver ma tenance, qe jeo ne soi pas ouste saunz resoun.—*HILLARY*. Vous avez a la value vers le vouche de chesqune chose qe luy soit descendu puis le voucher.—*Thorpe*. Jeo le doute.—*Pols*. La ou

¹ 25,184, sayer dextente, instead of de lextente.

² L., assez.

³ 16,560, resceise.

⁴ Harl., il.

⁵ L., de pus, instead of del houre.

⁶ L., chet; Harl., chete.

⁷ unquore is not in Harl.

⁸ 25,184, venger.

⁹ T. and 16,560, fourny; 25,184, perfony; Harl., forme.

¹⁰ T., ne avera; 25,184, navera.

¹¹ L., suy.

¹² lexecucion is not in 16,560.

¹³ T., mes saufce; 16,560, nest saufve; Harl., est sauve, instead of moy est salve.

¹⁴ 25,184, pur.

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heir was vouched in the same county and also in other counties, and he entered into warranty as one who had nothing by descent and rendered dower, and the tenant said that he had assets by descent, the demandant by law ought to have had her dower and execution immediately, without any other delay, against the tenant, for otherwise she would be always delayed by inquest between the tenant and the vouchee, which inquest is not of office but on the mise of the parties, which, perhaps, will never pass; but where the heir is vouched in that county alone in which the land demanded is, there the judgment shall be conditional, because it does not involve delay, for the Sheriff will *ex officio* do all.—HILLARY. Certainly you say what is true; such is the law, and so the course has been heretofore and still shall be; and we marvel at this judgment; but now execution must needs be had according to the judgment.—And *Thorpe* had his prayer, that is to say, a writ to the Sheriff of the county in which the land demanded is, who had returned that the vouchee had nothing by descent, directing him to enquire whether assets had descended to the vouchee since his return, because the tenant had testified that assets had since descended to the vouchee in the vills of A. and B. On the day given the Sheriff of the county in which the land demanded is testified that in the vill of B. nothing had descended to the vouchee in fee simple, but that his father leased to a tenant, for term of life, certain tenements, rendering to him and to his heirs forty marks, which rent had descended to him who is now vouched; and as to what was alleged in A. the Sheriff returned that he had sent to the bailiff of a liberty, who had done nothing. And the other Sheriffs, who at first did nothing, now testified that the vouchee had nothing by descent.—*Pole*. We

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leir fuit vouche en mesme le counte et auxi en altres countes, et il entra come celui qe rien navoit par descende et rendist, et le tenant dit qil avoit assez par descende, la demandante par ley dut¹ aver eu soun dower et execucion tantost, saunz altre delay, vers le tenant, qar autrement serroit ele touz jours delaie par enqueste entre le tenant et le vouche, quel enqueste nest pas doffice mes a mise² des parties, qe³ jammes par cas passera; mes ou leir est vouche en mesme la counte ou la demande⁴ est soulement, la serra le jugement condicional, pur ceo qe ceo ne chiet pas en delaye, qar le Vicounte doffice fra tut. —HILL. Certes vous dites verite; tiele est la ley, et issi ad este fait avant ces hures et uncore serra; et nous merveilloms de ceo jugement; mes ore il covient faire lexecucion accordaunt al jugement.—Et *Thorpe* avoit sa priere,⁵ saver, a Vicounte ou la demande est, qe avoit retourne qil navoit rien par descende, qil enquist si assez luy fuit descendu puis soun retour. pur ceo qe le tenant ad tesmoigne qe puis assez lui descendist en les villes de A. et B.; a quel jour le Vicounte ou la demande est tesmoigna qen la ville de B. rien luy est descendu de fee simple, mes soun pere lessa a un tenant, a terme de vie, certeyns tenementz, rendaunt a luy et a ces heirs xl. mars, quele rente est descendu a celui qest ore⁶ vouche; et quant a ceo qe fuit allegge en A. il avoit maunde au bailif dune fraunchise qe rien ne fist. Et les altres Vicountes, qe primes rien ne firent, tesmoignerent ore qe le vouche nad⁷ rien par descende.—*Pola.* Nous

A.D.
1341-2.¹ T., duist.² L., mise; 16,560, misaunce.³ T., et.⁴ Harl., demandante.⁵ The report ends here in L., 16,560, and Harl.⁶ ore is not in 25,184.⁷ 25,184, navoit.

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A.D. 1841-2. pray execution for the demandant, for now all the Sheriffs have answered that the heir has nothing.—*Thorpe*. Previously judgment was given to send to the Sheriff of the county in which the land demanded is, to certify whether since his first return assets had descended, which judgment ought to be followed up, and it is not fully served; wherefore it is necessary to have a *Non omittas*.—*Pole*. This was done on your prayer, as not causing delay to the demandant; wherefore all the returns shall now be joined together, as if all had been done at the first day, and execution shall be awarded.—And so it was done.—And note that it was said that such a rent having descended, although it be not of fee simple, shall be given in value to the tenant by *Scire facias* after execution, but not to the tenant in dower.—See further as to this matter in Trinity term, when the tenant,¹ who now lost, sued *Scire facias* in respect of this rent.

Assise of
Novel
Disseisin.

(7.) § The Abbot of Croyland and four other persons brought an assise of Novel Disseisin against the Abbot of Thorney and others, and made their plaint in respect of eight acres of marsh. Their bailiff pleaded to the assise. It was found by the assise that the plaintiffs were seised and disseised. And

¹ Demandant seems to be substituted for tenant, in the MS., by mistake.

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prioms execucion pur la demandante, qar ore ount touz les Vicountes respoundu qe leir nad rien.—*Thorpe*. Altrefoitz fuit agarde de maunder al Vicounte ou la demande est a certifier si puis son primer retourne assez fuit descendu, quele agarde covient estre pursuy, et nest pas pleynement servy; par quei il covient aver *Non omittas*.—*Pole*. Ceo fuit fait¹ a vostre priere pur ceo qil ne face² pas delay a la demandante; par quei homme ore joindra³ touz les retourns ensemble, auxi come tut ust este fait al primer jour, et agardera execucion.—*Et ita factum est*.—*Et nota quod dictum*⁴ est qe tiele rente descendu, tut ne soit ceo pas de fee simple, serra fait en value al tenant par *Scire facias* apres execucion, *sed non tenenti in dote*.⁵—*Quere postea termino Trinitatis de ista materia* ou le demandant, qe ore perdist, swit le *Scire facias* de ceste rente.

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(7.)⁶ § Labbe de Croyland et altres iij⁷ porterent un⁸ assise de⁹ novele disseisine vers labbe de Thorneye et altres, et¹⁰ firent lour pleynte de viij acres de marreys. Lour bailiff pleda¹¹ al assise, par quele fuit trove qe les pleintifs furent seisiz et¹²

Assise
Novae Dis-
seisinæ.
[16 Li.
Ass., 1;
Fitz.
Assise,
205; Col-
lusion, 10.]

¹ fait is not in L.

² 25,184, fut.

³ 25,184, joindra.

⁴ 25,184, *prædictum*.

⁵ The report ends here in T., the concluding sentence being from 25,184 alone.

⁶ From the five MSS. as above, but corrected by the record *Placita de Banco*, Hilary, 16 Edw. 3., R^o. 256. It there appears that the assise was brought by the Abbot of Croyland, Margaret late wife of John de Roos, Hawise de Gouxhill, James de Roos, and Hugh de Burgiloun, against Reginald Abbot of

Thorney, Simon Gentil of Peykirke (Peakirk), Robert de Farsete (Farcet) of Ovyrtone (Overton), Simon Sabyn of Farsete (Farcet), and Walter Parlebieu of Gedney, in respect of eight acres of marsh in Gedney (Lincolnshire).

⁷ T. and 25,184, ij; L., 16,560, and Harl., iij.

⁸ un is from L. and 16,560 only.

⁹ The words assise de are omitted from 16,560 and Harl.

¹⁰ 16,560, qe.

¹¹ pleda is omitted from L.

¹² The words seisiz et are from L. alone.

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A.D.
1341-2.

because the Abbot who is plaintiff is a man in religion, his right was enquired of, and it was found that the manor of Gedney, of which the eight acres as waste were parcel, was in the seisin of one Fulk, from whom the manor descended to three daughters who made partition; and the waste remained in common; and one of the daughters, before the Statute,¹ enfeoffed the predecessor of this Abbot of Croyland of her purparty, by reason whereof the Abbots of Croyland and the co-parceners and those who have had the estate of the co-parceners have had and holden the waste in common, without this that anyone knew his several, until they were ousted by those who are named.—*Gayneford*. Judgment of the writ, for they brought their writ in common, and it is found that they held by several titles, in which case, if they were tenants, several writs would lie against them, on account of the mischief of warranty; and for the same reason, when they are out of possession, they shall demand by several writs.—*Pole*. The case of a waste is not like the case of land, for waste is appendant by way of seignory, and never falls into severalty by common right until it be approved; for whosoever would bring an assise of common of pasture must bring it against all in common. On

¹ 7 Edw. I., St. 2.

No. 7.

disseisiz. Et pur ceo qe labbe qest¹ pleyntif est homme de religion, enquis fuit de son dreit, et fuit trove qe le manere de Gedney,² de quel les viij acres come³ wast sount parcele, fuit en la seisine un F.,⁴ de qi descendi le manere a iij filles qe firent purpartie; et le wast demora en comune; et une de sa purpartie feffa, devant statut,⁵ le predecessour cesty Abbe de Croyland,⁶ par quei les Abbes de Croyland⁷ et les parceners et ces qount eu lestat des parceners ount eu et tenu le wast en comune, saunz ceo qe nul savoit soun several, tange ils furent oustes de par ces qe sount nomes.—*Gayn.* Jugement du bref, qar ils ount porte⁸ lour⁹ bref¹⁰ en comune, et trove est qil tindrent par several title, en quel cas, sils fuissent tenantz, several bref girreit vers eux pur meschief de garrantie; et par mesme la resoun, quant ils sount¹¹ hors, ils demanderont par several bref.—*Pole.* Il nest pas de wast come est de terre, qar wast est appendaunt par voie¹² de seignurie, qe jammes ne chiet en severaunce par comune dreit tange il soit approwe;¹³ qar qi portereit assise de comune de pasture il covyn-dreit porter vers touz en comune. Daltre part, quantqe

A.D.
1341-2.

¹ L., qe fuit.

² T., R.; L., 25,184, and Harl., B.; 16560, W.

³ L., de terre.

⁴ All the MSS., H.; but, according to the record, the allegation was that, in the time of Edward I., before the Statute of Mortmain, an Abbot of Croyland purchased to him and his successors two parts of the third part of the manor of Gedney from Alice, daughter and one of the heirs of Fulk de Orry, and that the eight acres of marsh were waste of the manor aforesaid.

⁵ L. and 25,184, estatut; the word is omitted from Harl.

⁶ The words de Croyland are omitted from T., L., 25,184, and Harl.

⁷ The words par quei les Abbes de Croyland are omitted from 16,560.

⁸ T., il porta, instead of ils ount porte.

⁹ T., le.

¹⁰ The words lour bref are omitted from L.

¹¹ 25,184, furent.

¹² L., resoun.

¹³ L., approue; Harl., approve.

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A.D.
1341-2.

the other hand, whatever appertained to trial between the parties was determined when the assise had said that the plaintiffs were seised and disseised; and whatever was enquired of beyond that was only of Office, of which the party shall not have advantage, and of which there would be no need to enquire when the action was tried; wherefore we pray seisin. And even though it were found that the plaintiff had not right, in a case where enquiry ought to be had of the right, still judgment would be given for the plaintiff, but not execution; and now our right is found.—*Thorpe*. I do not know any difference between land and waste; and I say that by law, either in assise or in *Præcipe quod reddat*, although it be the action by a man in religion that is tried, the Court will enquire of his right, before he shall have his judgment, by the same inquest; but in case of default judgment is given first, and afterwards by *Quale ius* enquiry is had as to collusion. Then, when it was necessary to enquire of his right in the assise, it was proper to take that as parcel of the verdict; and when by that the writ is found false, it is proper to abate the writ, for if the party plead to the assise and it is found that the tenant held jointly with another who is not named, or that the plaintiff never had anything except jointly with another who is not named, the writ will abate.—*Pola*. Never when the exception is one which lies in challenge to be made by the party

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appent destre trie entre parties fuit termine quant lassise avoit dit qe les pleyntifs furent seisiz et dis-seisiz; et ceo qe fuit enquis outre ceo nest forsqe doffice, de quei partie navera pas avantage, et quele¹ chose ne bosoignereit pas daver enquis quant laccion est trie; par quei nous prioms seisine.² Et tut fuit ceo trove qe le pleyntif navoit pas dreit, en cas qe homme le duist enquere, unquore jugement se fra pur le pleintif, mes execucion nynt; et ore nostre dreit est trove.³—*Thorpe*. Jeo ne say pas diversite entre terre et wast; et jeo die qe par ley, soit en assise soit il en *Præcipe quod reddat*, coment qe accion de homme de⁴ religion soit trie, Court enquera de soun dreit, avant ceo⁵ qil avera soun jugement, par mesme lenqueste; mes en cas de defaute la rende⁶ homme jugement primes et puis par *Quale jus* enquert de la collusion. Donques, quant ceo fuit necessarie⁷ denquere de soun dreit en lassise,⁸ il covynt prendre cele come parcelle del verdit; et quant par cel⁹ est trove le bref faux, il covynt dabatre le, qar¹⁰ si partie, plede al assise et trove est qe le tenant tient¹¹ joint¹² ovesqe un altre qe nest pas nome, [ou qe le pleintif navoit unqes mes joynt ove un altre qe nest pas nome]¹³ le bref abatera.—*Pole*. Jammes quant exception qe chiet en challenge [de partie, et partie¹⁴ nel

A.D.
1341-2.

¹ L., qe la.

² Harl., assise; L., seisine de terre.

³ T., prove.

⁴ The words homme de are not in Harl.

⁵ ceo is from L. alone.

⁶ The words la rende are omitted from 16,560.

⁷ Harl., necessaire.

⁸ The words en lassise are omitted from Harl.

⁹ L., en parcel; Harl., par parcel, instead of par cel.

¹⁰ L., bref.

¹¹ Harl., navoit unqes mes.

¹² 25,184, yont.

¹³ The words between brackets are omitted from 25,184 and Harl.

¹⁴ The words et partie are omitted from all the MSS. except L. and Harl.

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A.D. 1341-2. and the party does not make it ; then, even though the Assise state the fact by verdict, the party shall never have advantage of it.—*Thorpe* denied this.—And afterwards they were adjourned into the Bench, where BASSET, with the assent of the Justices, adjudged that the plaintiffs should recover their seisin by view of the jurors ; but he did not assign the reason for the judgment, whether because the writ would be good for them in common on such a matter, or because what was found in abatement of the writ was not enquired of except of Office on the collusion, and not a thing enquirable between the parties of which a party can have advantage.—*Quere.*

Scire
facias.

(8.) § A writ issued to the King's Treasurer, &c., to certify the King, in the Chancery, in which King's time the manor of T. was in the hands of his progenitors, and how it came out. And they certified that it was in the hand of King Henry the elder, and that the Kings were answered as to the farm until the ninth year of King Richard, when the Sheriff was discharged of the farm because the King had given it to one B. And upon that certificate a *Scire facias* issued against W. Praers and others, tenants of the manor, to show whether they could say anything wherefore the manor ought not to be

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challenge]¹ pas; mes qe lassise le dise² pur verdit ja navera partie avantage.—*Thorpe* le dedit.³—Et puis furent ajournes en Baunk, ou BASSET, *ex assensu Justiciariorum*,⁴ agarda qe les pleintifs recoverassent lour seisine par vewe des jurours, *sed non assignavit causam judicii*, le quel le bref serroit bon pur eux en comune sur tiele matere, ou pur ceo qe ceo qe fuit trove en abatement du bref ne fuit pas enquis forsque doffice sur la collusion et noun pas chose enquerable entre parties dount partie puit aver avantage.—*Quere*.

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(8.)⁵ § Bref issit a Tresorer le Roi, &c.,⁷ de certifier le Roi, en la Chauncellerie, en temps de⁸ quele Roi le manere de T.⁹ fuit en mayns de ses¹⁰ progenitours, et coment il vynt hors; qe certifierent qe ceo fuit en la mayn le Roi H. le veil,¹¹ et qe les Rois furent responduz¹² de la ferme tanqe al an ix^{me} le Roi Richard,¹³ qe¹⁴ le Vicounte¹⁵ fuit descharge de la ferme pur ceo qe le Roi lavoit done a un B. Et hors de cele¹⁶ certificacion *Scire facias* issit vers W. Praers¹⁷ et altres,¹⁸ tenantz du manere, sil savoint rien dire pur quei¹⁹ le manere ne dust²⁰ estre seisi en la mayn

Scire
Facias.⁶
[Fits.
Briefs,
649.]

¹ The words between brackets are omitted from 16,560.

² T. and L., dit; Harl., die.

³ T., *dedixit*; Harl., *disit*, instead of le dedit.

⁴ The word *Justiciariorum* is omitted from Harl.

⁵ From the five MSS. as above.

⁶ This is the marginal note in T. and 25,184; in 16,560 it is *avowere*; in L., *Certificacion*; and in Harl., *Per certificacion mande en Chancellerie*.

⁷ The words le Roi, &c. are omitted from 16,560, and the word pur is introduced before them in 25,184.

⁸ 25,184, le.

⁹ 25,184, M.; Harl., C.

¹⁰ T., L., and 25,184, ces.

¹¹ T., veille.

¹² 16,560, receuz.

¹³ Richard is omitted from L.

¹⁴ T., et.

¹⁵ 16,560, Viscounte.

¹⁶ 25,184, tiel.

¹⁷ 16,560, Praiers; T., Parers.

¹⁸ The words et altres are not in L.

¹⁹ 25,184, qui.

²⁰ L., *serra*, instead of ne dust.

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1341-2.

seized into the King's hand and they be ousted.—

R. Thorpe. We do not understand that in this Court of Office you will hold a plea of a freehold.—

PARNING. The King shall be answered in whatever Court he will choose his suit; wherefore answer.—

R. Thorpe demanded oyer of the record upon which this writ issued; and the certificate from the Treasury was read, which purported as above.—*R. Thorpe.*

This writ in its nature ought to issue upon a record which should be the King's gift, of which we pray oyer; for this certificate is only a supposition of a gift.—PARNING.

We have it of record by the certificate that there was a gift, and that is sufficient.—*R. Thorpe.*

It is not; for a gift may be for term of life, or in fee tail, or in fee simple, as to which you can not know unless you see the gift; and if the gift was in fee simple, as it might be, notwithstanding the record which you have, this writ is not warranted by the record.—PARNING.

When the King gave the manor to B., as the certificate records, and no larger estate is limited over, for anything that we know, then by common right nothing passed but a freehold, the reversion being saved to the King; and if any other estate passed, shew you that.—*R. Thorpe.*

Still, judgment of the writ; for the writ supposes that the manor ought to revert, and does not suppose it after the death of any particular person; judgment of the writ.—PARNING. If you will not answer in

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le Roi et il ouste.¹—*R. Thorpe*. Nous nentendons pas qen ceste place doffice ne voillez plee de franc tenement tenir.²—*PARN.*³ Le Roi serra respondu en quele place qil voet eslire sa suyte; par quei responez.—*R.*⁴ *Thorpe* demanda oy del record dount cesty bref issit; et la certification de la Tresorie⁵ fust lieu, qe voleit *ut supra*.—*R. Thorpe*. Cesty bref de sa nature deit issir⁶ de record quel dust estre le doun le Roi, de⁷ quei nous prioms le oy,⁸ qar cele certification nest forsque supposaille⁹ dun doun.—*PARN.* Nous avoms de record par la certification qe doun y¹⁰ avoit, et ceo suffit.¹¹—*R.*¹² *Thorpe*. Noun fait; qar doun put estre a terme¹³ de vie, ou fee taille, ou fee simple, de quele chose vous¹⁴ ne poez¹⁵ savoir si vous ne¹⁶ veissez le doun; et si le doun fut de fee simple, come put estre, *non obstante* le record qe vous avez, cesty bref nest pas garranti de record.—*PARN.* Quant le Roi dona le manere a¹⁷ B,¹⁸ come la certification recorde, et plus large estat nest¹⁹ taille outre pur rien qe nous savoms, donques par comune dreit rien ne passa forsque franc tenement, la reversion salve a Roi; et si altre estat passa, moustrez vous cella.—*R.*²⁰ *Thorpe*. Unqore, jugement de bref; qar le bref²¹ suppose qe le manere deit reverter, et ne suppose apres nully mort; jugement de bref.—*PARN.* Si vous

A.D.
1341-2.¹ L., houte.² 25,184, tener.³ Harl., *Pole*.⁴ R. is omitted from T. and 25,184; L., *Robert*.⁵ 16,560 and L., *Treasurer*.⁶ L., *isser*.⁷ L., *par*.⁸ T., *loie*; 16,560 and Harl., *ley*; the words de quei nous prioms le oy are omitted from 25,184.⁹ 16,560, *supposail*; 25,184, *supposaille*; Harl., *supposable*.¹⁰ L., *il*.¹¹ Harl., *suffist*.¹² R. is omitted from 16,560 and 25,184.¹³ 16,560, *trove*.¹⁴ 25,184, *nous*.¹⁵ 25,184, *poms*.¹⁶ ne is not in 16,560.¹⁷ L., *de*.¹⁸ T., R.; 16,560, *W*.¹⁹ L., *ne fut*.²⁰ R. is not in 25,184.²¹ L., *qe*, instead of *qar* le bref.

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your tenancy, the Escheator will be commanded to seize, because you do not show how you entered the King's fee. — *R. Thorpe*. I have not pleaded as tenant, nor have I a day to answer to this by writ. PARNING. Even without a writ we can be apprised of it.—And he ordered a writ to the Escheator to seize in case he found that B. to whom the gift was made was dead.—And afterwards, for that cause, the King sued another writ of *Scire facias* supposing the death of the tenant for term of life, which was abated on the ground of several tenancy, whereas their tenancy was supposed to be in common by the writ.—And afterwards another writ was brought, when exception was taken to the writ as not being warranted by the record; and upon that they went to judgment.

Avowry
upon a
stranger.

(9.) § William de Coucy avowed upon Ralph de Bethum, for that Ralph held of him the manor of Bethum [Beetham], whereof the place where the taking

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ne voillez respondre en vostre tenance, homme maundra al eschetour de seisir, pur ceo qe vous ne moustrez¹ pas coment vous estes entre² le fee le Roi.—*R.³ Thorpe.* Jeo nay pas plede come tenant, ne jeo nay jour⁴ a ce respondre par bref.—*PARN.* Tut saunz bref nous le saveroms.—Et il comanda bref al eschetour de seisir en cas qil⁵ trovast qe B.⁶ a qi le doun fuit fait⁷ fuit mort.⁸—*Et postea, ea de causa,* le Roi suyst altre bref de *Scire facias* supposant la mort le tenant a terme de vie, qe fuit abatu par several tenance, ou lour tenance fuit suppose en comune par le bref.—Et puis altre bref porte,⁹ ou le bref est challenge qil nest pas garranti del recorde; *et super hoc ad judicium.*

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(9.)¹⁰ § William de Coucy¹¹ avowa sur Rauf de Bethum¹² pur ceo qil tynt de luy le manoir de Bethum¹³ dount le lieu¹⁴ ou la prise, &c., par homage, fealte et

Avowere
sur es-
trange.⁽¹¹⁾
[Fits.
Avowere,
90.]

¹ L., moustroms.

² Harl., en dreit.

³ R. is not in 25,184.

⁴ jour is not in 25,184.

⁵ 16,560, sil.

⁶ 16,560, W.

⁷ L., se fit, instead of fuit fait.

⁸ The case ends here in L., 16,560, and Harl.

⁹ porte is not in 25,184.

¹⁰ From the five MSS. as above, but corrected by the record, *Placita de Banco*, Hil., 16 Edward 3, B^o. 87 d. It there appears that the action of Replevin was brought by John de Haveryngton, the younger, knight, against William Coucy and William Fowler.

¹¹ The words sur estrange are from Harl. alone.

¹² T., Comyn; L., 16,560, 25,184, and Harl., Coucey.

¹³ T., 16,560, and 25,184, Bethom; Harl., Bethun; L., Bethon.

¹⁴ T., Bethom; 16,560 and Harl., Bethun; L., Bethon; 25,184, B.; Harl., Bethun.

¹⁵ According to the record the taking of six oxen and four cows was alleged to have been in a place called Kirkebrek.

Coucey, for himself and Fowler, avows, saying that Ralph de Bethum holds of him the manor of Bethum [Beetham in Westmoreland], by homage, and fealty, and by the service of 28s. 8d., "pro cornagio," and by the service of 35s. 4d., "pro putura ejusdem hominis ejusdem Willelmi, qui vocatur Landser-jaunt, qui faciet summonitiones, attachiamenta, et districtiones, ac alias executiones faciendas in eodem manerio de Bethum, que

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&c., by homage, fealty and 28s. 8d., for cornage, to be paid at two terms of the year, and the puture of a beadle who was to do execution of matters adjudged in William de Coucy's Court of Kirkby in Kendal within the same manor, and by the services of finding

" *judicata fuerint in Curia ejusdem*
 " *Willelmi de Kirkeby in Kendale,*
 " *et per servitium inveniendi duos*
 " *homines qui vocantur Wytnes-*
 " *men ad supervidendum execu-*
 " *tionem prædictas factas per præ-*
 " *dictum Landserjaunt infra mane-*
 " *rium de Bethum prædictum et*
 " *easdem executiones testificare ad*
 " *prædictam Curiam de Kirkeby in*
 " *Kendale, et per servitium viginti*
 " *et quatuor trabarum avenarum*
 " *per annum ad festum Nativitatis*
 " *beatæ Mariæ solvendarum, et per*
 " *servitium sex crebrarum avenarum*
 " *per annum solvendarum ad fes-*
 " *tum Annunciationis beatæ Mariæ,*
 " *quarum quælibet crebra contine-*
 " *bit unum quarterium cumulatam,*
 " *et per servitia quadraginta et*
 " *septem gallinarum per annum ad*
 " *festum Natalicium Domini sol-*
 " *vendarum, et faciendi sectam ad*
 " *Curiam ipsius Willelmi de Kirke-*
 " *by in Kendale de tribus septi-*
 " *manis in tres septimanas, de*
 " *quibus servitio ipse Willelmus*
 " *fuit seisitus per manus prædicti*
 " *Radulfi ut per manus veri tenentis*
 " *sui,"* and he avows for these services in arrear.

Haveryngton pleads that he and Katharine his wife, as in right of Katharine, hold in the manor of Bethum [Boetham] certain messuages and lands of William de Coney by homage, fealty, and the service of 26s. 8d. for cornage, of which ser-

vices the said William is seised by their hands as by the hands of his very tenants, as of the right of Katharine, and prays judgment whether William can avow on any one but them for the services.

William de Coucy replies that Thomas de Bethum "triavus" of Ralph, whose heir Ralph is, was seised of the whole of the manor of Bethum in the time of Henry III., and held it of Walter de Lyndeseye, whose estate William de Coucy has, whereof the tenements held by John and Katharine in right of Katharine are parcel, that Thomas "triavus" gave them to Hawise his daughter, in the time of Henry III., to hold in tail of Thomas and his heirs by homage, fealty, and other certain services "et faciendi pro ipso Thoma et heredibus suis capitalibus dominis &c. duas marcas per annum pro cornagio &c." She had issue Joan, who divested herself of the said tenements to Adam Banastre, father of Katharine, John's wife "unde petit iudicium si idem Johannes per aliquam seisinam prædicti redditus per manus prædictorum Johannis et Katerine habitam qui redditum illum pro prædicto Radulfo solverunt, qui est verus tenens ipsius Willelmi, ad extraneandum ipsum Willelmum de vero tenente suo prædicto admitti debeat, &c. Et quoad homagium &c. dicit

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xxvijs. viijd.¹ a cornage,² a paier a ij termes del an, et la³ puture dun Bedelle qe freit execucion de choses ajuges en la Court William⁴ Coucy⁵ de Kirkeby⁶ en Kendale deinz mesme le manoir, et par les services a

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" quod ipse Willelmus nunquam
" fuit seisitus de homagio illo, &c.,
" nec fidelitate &c."

After adjournments the parties come, and John says that Thomas gave the tenements to Hawise in fee simple " non faciendo aliquam mentionem de quo tenementa prädicta tenere deberet nec quod aliqua servitia inde alicui facere deberet pro eodem Thoma Quæ quidem Hawisia postmodum se attornavit de prädictis duabus marcis cuidam Waltero de Lyndeseye capitali domino &c. Et post mortem ejusdem Hawisie quidam Thomas filius et heres ejusdem Hawisie de homagio fidelitate et cornagio &c. se attornavit cuidam Willelmo de Lyndeseye filio prädicti Walteri capitali domino, &c., et sic omnes illi quorum statum ipsi Johannes et Katerina habent &c. post tempus prädicti feoffamenti præfatæ Hawisie inde facti semper fuerunt intendentes de servitiis suis prädictis præfato Waltero et heredibus suis et illis quorum statum prädictus Willelmus de Coucy habet. Et similiter ipse Willelmus de Coucy nunc seisitus est de servitiis ipsorum Johannis et Katerine absque hoc quod prädicta Hawisia vel aliquis heredum suorum vel illi quorum statum ipsi Johannes et Katerina habent &c. unquam fuerunt intendentes præfato Thoma vel heredibus suis, unde petit judicium si super alium quam super ipsos captionem prädictam advocare possit &c.

" Et Willelmus, non cognoscendo
" quod prädicta Hawisia se attornavit præfato Waltero nec quod prädicti Thomas filius Hawisie nec Johannes et Katerina vel aliqui alii se attornaverunt prädicto Willelmo de Lyndeseye vel heredibus suis vel ipso Willelmo de Coucy in forma qua prädicti Johannes et Katerina supponunt, dicit, ut prius, quod prädictas Thomas de Bethum dedit prädicta tenementa præfatæ Hawisie in feodo talliato tenenda de ipso Thoma et heredibus suis sicut ipse superius dixit Et hoc paratus est verificare &c. unde petit judicium &c.

" Et Johannes dicit quod prädictus Thomas dedit prädicta tenementa præfatæ Hawisie tenenda in feodo simplici, &c., in forma qua ipse superius supponit et non præfatæ Hawisie tenenda in feodo talliato, &c., in forma qua prädictus Willelmus dicit Et de hoc ponit se super patriam. Et Willelmus similiter."

Award of *Ventre*.

The result does not appear.

¹ T., xls.; L., 16,560, 25,184, and Harl., ls., instead of xxvijs. viijd.

² 25,184, coronage.

³ la is omitted from 16,560 and Harl.

⁴ 25,184 and Harl., W.

⁵ All the MSS. of Y.B., except Harl., Coucy.

⁶ L., Kyrby; Harl., Kirley.

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A.D. 1841-2: two men who should present, &c., who are called Witnessmen, and by six *crebra* of oats, whereof every *crebra* amounts to one quarter, and by paying forty-seven hens at Christmas, and doing suit to his court of Kirkby, &c. And William alleged seisin by the hand of Ralph. And, because all the services, except the homage, fealty, and suit to his Court, were in arrear for four years before the taking, he avowed for the cornage for the first year.—*Pole*. We tell you that John, son of John Haveryngton, knight, who is plaintiff, and Katharine his wife, hold in Beetham twelve messuages, four carucates of land, &c., whereof the place where the taking, &c., is parcel, as in right of Katharine, his wife, of this same William who avows, by homage, fealty and two marks by the year, of which services he is seised by their hands; judgment, whether he can avow on any other than them.—*Derworthy*. He does not show how he has come to be our tenant, nor does he deny that the other on whom we avow is our tenant; wherefore we pray the Return. Besides, he does not make himself our tenant, except in right of his wife, who is not a party. And suppose that a stranger who has nothing in the land pays to me my services, I am not thereby estranged from my

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trover ij hommes qe presenterount, &c., qe sount appellees
 Wytnesmen,¹ et par vj² crebres des aveyns, dount
 chesqun crebre amonte a un quarter, et a payer xlvij³
 gelyns⁴ a Noel,⁵ et sute a sa Court de Kirkeby,⁶ &c.
 Et lia seisine par⁷ sa mayn. Et pur ceo qe touz les
 services, par iiij aunz avant la prise furent arere, sauf
 lommage, fealte, et la sute a sa Court,⁸ pur le cornage⁹
 del primer an il avowa.—*Pole*. Nous vous dioms qe
 Johan¹⁰ fitz Johan¹⁰ Haveryngtone,¹¹ chivaler, qest
 pleyntif,¹² et K.¹³ sa femme, tenent en Bethum xij
 mees, iiij charues de terre, &c., dount le lieu ou la
 prise, &c., est parcelle, come del droit Katerine,¹⁴ sa
 femme, de mesme celui William qe avowe, par homage,
 fealte, et ij marcز par an, des quex services il est seisi
 par lour mayns; jugement, si sur altre qe sur eux
 puisse¹⁵ avower.—*Derworth*. Il ne moustre pas coment
 il est avenuz destre¹⁶ nostre tenant, ne¹⁷ il ne dedit
 pas qe lautre nest nostre tenant sur qi nous avowoms;
 par quei nous prioms retourn. Ovesqe ceo, il ne se fait
 pas nostre tenant, forsqe¹⁸ en le droit sa femme, qe
 nest pas partie. Et jeo pose qun estraunge, qe rien
 nad en la terre, me¹⁹ paie²⁰ mes services, par taunt ne
 sui²¹ jeo pas estrange de moun verroie²² tenant; ou

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¹ 16,560, Witnesmen; T., and
 Harl., Wittenesmen; 25,184,
 Witenesmen.

² The MSS. of Y.B., viij.

³ The MSS. of Y.B., xl.

⁴ Harl., gellins.

⁵ L., Nouwel.

⁶ L., Kyrby; Harl., Kirley.

⁷ 25,184, par my.

⁸ The words a sa Court are from
 Harl. alone.

⁹ 25,184, coronage.

¹⁰ L., J.

¹¹ The MSS. of Y.B., Haryngtone.

¹² 16,560 and 25,184, qe se pleint,
 instead of qest pleyntif.

¹³ K. is not in L. or 16,560.

¹⁴ All the MSS. of Y.B. except
 16,560, K.

¹⁵ L., put; Harl., puis; 25,184,
 puisses.

¹⁶ destre is not in L.

¹⁷ ne is not in 16,560.

¹⁸ T., mee.

¹⁹ L., moy.

²⁰ 25,184, paya.

²¹ 16,560, sue; 25,184, suy; L.
 and Harl., su.

²² L. and 16,560, verrey; 25,184,
 verrai; Harl., verrol.

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very tenant; or if the lord paramount receive services by the hand of the tenant in demesne, he is not thereby estranged from the mesne.—HILLARY. He shall not show how by title he has come to the land, when you have accepted him as your tenant; for a disseisor, if he be accepted as tenant by the lord, will compel the lord to avow upon him.—*Stouford*. Seisin of services shall not be tried except between lord and tenant; then, inasmuch as he did not make himself tenant, and does not deny that the other was my tenant, or that seisin was had by the hand of the latter, unless he be made a privy by the person on whom I have avowed, the law does not put me to answer.—*Thorpe*. Seisin makes an issue in Replevin, and not tenancy; and I cannot traverse by saying that he upon whom you have avowed did not hold of you. And suppose that, when the land is within your fee, you have made your avowry upon a stranger who never had anything, but that I am of right your tenant, what answer should I have different from that which I have now given?—HILLARY. He pleads sufficient to abate the avowry.—*Derworthy*. We tell you that Thomas de Bethum, great-grandfather of Ralph, on whom the avowry is made, held the manor of Beetham of one Walter de Lyndeseye,¹ whose estate in the seignory

¹ The translation is in accordance with the name in the record.

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si le seignur par amount rescayve services¹ par la mayn le tenant en demene, il nest pas par taunt estraunge de mene.²—HILL. Il ne mustlera³ pas coment par title⁴ il est avenuz⁵ a la terre, quant vous lavez accepte cum⁶ vostre tenant;⁷ qar disseisour, sil soit accepte tenant de⁸ seignur, chacera luy⁹ davowere sur luy.—*Stouff.* Seisine des services ne serra pas trie fors entre seignur¹⁰ et tenant; donques, quant il se fit¹¹ pas¹² tenant¹³, et ne dedit pas qe lautre ne¹⁴ fut moun tenant, et la seisine eu par sa mayn, sil ne soit pas fait prive¹⁵ par celuy sur qi jay avowe, ley¹⁶ ne moy¹⁷ mette a respondre.—*Thorpe.* La seisine fait issue en *Replegiari*, et noun pas la tenance; et jeo ne puis pas traverser qe celuy ne tynt pas de vous sur qi vous avez avowe. Et jeo pose qe vous eiez¹⁸ fet vostre avowere, la ou la terre est deinz¹⁹ vostre fee, sur un estraunge qe unques rien avoit, mes jeo su de dreit vostre tenant, quel respons averai²⁰ jeo altre qe jeo nay²¹ donc a ore?—HILL. Il plede assetz dabatre lavowere.—*Derworth.*²² Nous vous dioms qe Thomas de Bethum,²³ besaiel Rauf, sur qi lavowere est fait, tynt le manoir de Bethum²⁴ dun P.,²⁴ qi estat William²⁵ de

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1341-2.¹ L., ses services.² L., moy.³ So in 25,184; the other MSS., monstra.⁴ Harl., par title coment, instead of coment par title.⁵ 25,184, venus.⁶ cum is from T. alone.⁷ The words vostre tenant are not in 25,184.⁸ 16,560, du; 25,184, dil.⁹ L., luy chasera, instead of chacera luy.¹⁰ Harl., seignurs.¹¹ T. and L., fait; 16,560, fist.¹² pas is not in T. or in 25,184.¹³ tenant is not in 16,560.¹⁴ ne is omitted from T. and Harl.¹⁵ Harl., se fet prive; L., soi fait prive; T., and 16,560, soit primes fait, instead of soit pas fait prive.¹⁶ L., luy.¹⁷ moy is not in Harl.¹⁸ T., 16,560, and Harl., avez; L., eyets.¹⁹ L. and 16,560, dedeinz.²⁰ T., L., and 25,184, avera.²¹ 25,184, jay, instead of jeo nay.²² L., *Thorpe*.²³ T., Bethom; Harl., Bethon; L. and 25,184, B.²⁴ So in all the MSS. of Y.B.; the person was Walter de Lyndeseye, as appears in the record.²⁵ L., 25,184, and Harl., W.

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William de Coucy, who now avows, has, which Thomas in the time of the King the great-grandfather of the present King, enfeoffed Hawise his daughter, to hold to her and the heirs of her body begotten, of him and his heirs, by homage, fealty, and 26s. 8d. for cornage, and doing for him to the chief lords the services due. And of this Hawise there was issue Joan, who enfeoffed Adam Banastre father of Katharine the wife of John, the present plaintiff, to hold to him and his heirs of her and her heirs; and thus the receipt of the rent had through the hand of John who is plaintiff is by law only as through the bailiff of another; judgment, whether by such a receipt he can estrange us from our tenant. And, as to the homage and fealty, Not seised through their hands.—*Pole*. He admitted that he is seised of the cornage rent by our hand, so he has admitted that he is seised of that for which he avows; judgment, and we pray our damages.—This was not allowed, for even though he were seised through John's hand, because perchance John paid him the rent ten years ago, this is consistent with the fact that the rent is now in arrear.—*Pole*. Then we will aver that the seisin which he had through our hand is as through the hand of his very tenant, and not as through the hand of another's bailiff; for as to that which he alleges as to a feoffment we are a stranger to it, and in respect of it we can have neither plea nor issue.—*Derworthy*. You shall not be admitted to the

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Coucy¹ qe ore avowe ad en la seignurie, quel Thomas, en temps le Roi besaiel le Roi qe ore est, feffa² Hawyse sa fille a luy et a les heirs de soun corps³ engendres; a tenir de luy et ses heirs par homage, fealte, et xxvj⁴ s. et⁵ viij⁶ d. a cornage,⁷ et fesaunt pur⁸ lui a⁹ chefs seignurs¹⁰ les services dues; de quele H. issit Johane, le quel feffa¹¹ Adam Banastre pere Katerine femme Johan, qe ore¹² se¹³ pleynt, a luy et a ses heirs a tener de luy et ses heirs; et¹⁴ issi la resceite¹⁵ de la rente eu par la mayn Johan qest pleyntif nest de ley¹⁶ forsque come¹⁷ daltri bailiff; jugement, si par tiele resceite, nous puisse¹⁸ de nostre tenant¹⁹ estraunger. Et quant a homage et fealte, nynt seisi par lour meyn.—*Pole.* Il conust qil est seisi de la rente de cornage²⁰ par my nostre meyne, issi il ad conu qil est seisi de la chose pur²¹ quele il avowe; jugement, et prioms nos damages.—*Non allocatur*; qar tut soit il seisi par sa mayn, pur ceo qe par cas a x aunz de cy. il luy fesoit la rente cum²² hoc stat qe la rente soit arece a ore.—*Pole.* Donques voloms averer qe la seisine quel il avoit par my nostre meyn cest come par la mayn soun verroy tenant et noun pas come daltri baillif; qar a ceo qil allege²³ de feffement nous sumes estrange, et a ceo nous ne poms aver plee ne issue.—*Derworth.* Al avere-

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¹ All the MSS. of Y.B., except Harl., Councy.

² 25,184, enfeffa.

³ 25,184, cors.

⁴ L., xvij.

⁵ et is from 25,184 alone.

⁶ Harl., ix.

⁷ 25,184, coronage.

⁸ L., a.

⁹ L., pur; 16,560, au.

¹⁰ L., seignurs de fee.

¹¹ L. and 25,184, enfeffa.

¹² ore is omitted from all the MSS. except T.

¹³ L., ceo.

¹⁴ The words a tener de luy et ses heirs et are omitted from 25,184.

¹⁵ 25,184, seisine.

¹⁶ Harl., lui.

¹⁷ Harl., de.

¹⁸ 25,184, puisse.

¹⁹ tenant is not in L.

²⁰ 25,184, coronage et.

²¹ L., de.

²² T., come.

²³ L., ad allege.

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averment without answering as to the cause which proves that the seisin had through your hand can not be as through the hand of very tenant; for we make another on whom we avow to be mesne between you and us, so that the receipt of rent through your hand can only be in the name of a person other than yourself, except as to the fealty and homage the seisin of which we have traversed.—*W. Thorpe*. If tenant bring a writ of Mesne against his lord, and the lord say that he ought not to acquit the tenant, because the tenant has himself attorned to the lord paramount, it is a good answer to escape from acquittal of services; why then can not the tenant in demesne, for the same reason, if the case were such, say, in an avowry which the chief lord makes on the mesne, that he has attorned to the chief lord, and that the chief lord is seised through his hand as through the hand of his very tenant?—*R. Thorpe*. In the case of a writ of Mesne which you put, if the matter were such as we have alleged, that is to say, that the tenant was enfeoffed, performing the services to the lord paramount—even though he should perform the services which might be performed through the hand of another, such as payment of services due,—even though he had performed such services to the lord paramount—his mesne shall not escape from liability to acquit of services; no more shall you estrange us on such an act of our tenant.—*Pole*. We do not admit the feoffment, &c. of which he speaks, but we tell you that this *Hawise* of whom they speak was enfeoffed

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ment ne serrez resceu saunz respondre a la cause qe prove qe seisine eu par vostre mayn ne puit estre come de verroy tenant; qar nous fesoms un altre mene sur qi nous avowoms entre vous et nous, issi qe resceite de rente par vostre mayn ne pout estre¹ forsqe en altri noun qe le vostre, sil ne fut de feaute ou homage, la seisine des quels nous avoms traverse.—

W. Thorpe. Si le tenant porte bref de mene vers soun² seigneur, et le seigneur die qil ne le deit acquiter pur ceo qil est⁴ mesme attourne al⁵ seigneur par amount,⁶ cest bon respons destourtre⁷ dacquittance; pur quei ne poet le tenant en⁸ demene, par mesme la resoun, si le cas fut tiel, dire en avowere qe le chief seigneur fait sur le mene,⁹ qil est attourne a luy et il seisi par sa mayn come par la mayn son verray tenant?

—*R.*¹⁰ *Thorpe.* En le cas de¹¹ bref de mene¹² qe vous mettes, si¹³ la matere¹⁴ fut tiele come¹⁵ nous avoms allege qe le tenant fuit feffe¹⁶ fesaunt al seigneur par amount les services, mes qil fait les services qe purreint estre fait par altri mayn come payement des services, tut ust il fait tieux services au seigneur par amount, son mene nestourtera pas del acquittance, ne¹⁸ nient pluis estraungerez vous nous sur tele fait de nostre tenant.—*Pole.* Nous conissons pas le feffement, &c., dount¹⁷ il parle, mes vous dioms qe cele Hawyse dount¹⁸

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¹ L., estre autre.

² L., le.

³ L., soun.

⁴ est is not in 25,184.

⁵ T., a soun.

⁶ The words par amount are omitted from L.

⁷ L., destourtre luy; Harl., de oster.

⁸ L., del.

⁹ Harl., ly mesme, instead of le mene.

¹⁰ R. is not in 25,184.

¹¹ 25,184, en le.

¹² The words de bref de mene are omitted from Harl.

¹³ 25,184, qe.

¹⁴ L., cas.

¹⁵ L., fist feffement, instead of fuit feffe.

¹⁶ ne is not in 25,184.

¹⁷ L., de quel.

¹⁸ L., de qi.

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simply to hold to her and her heirs without condition, and afterwards the land was in the hands of one Isolda de Croft, whose estate we have; and we tell you that this Isolda attorned in respect of her fealty to Christiana de Lyndeseye, whose estate in the seignory William de Coucy has, which seisin can only be seisin had of the very tenant; judgment (since he has admitted that he is seised of the rent through our hand, which can only be through the hand of the very tenant, since the person whose estate he has in the seignory accepted the person whose estate we have, as very tenant, as above), whether he can avow on any other than us.—*R. Thorpe*. We tell you that Thomas de Bethum enfeoffed Hawise in the manner which we have stated; ready, &c.; (and the other side said the contrary); and as to the rest of what you say the law does not put us to answer.—*Pole*. And we demand judgment, since you have not denied that Isolda, whose estate we have, attorned, in respect of fealty, to Christiana de Lindeseye the heir of him whose estate in the seignory you claim, which could only be done through the hand of the very tenant, for the receipt of the fealty affirms a privity between them, and we shall have the same advantage as Isolda whose estate we have would enjoy; judgment, whether on any other than us, &c., or whether as to the rest of what you say we shall be put to answer,

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ils parlent fuit feffe simplement a luy et a ses heirs saunz condicion, et puis la terre fuit en la mayne¹ une Isolde de Croft, qi estat nous avoms; et vous dioms qe cele Isolde si attourna de sa fealte² a Cristiene³ de Lyndeseye qi estat William de Coucy⁴ ad en la seignurie, quele seisine ne puit estre forsque seisine eu de verroi tenant; jugement, del houre qil ad conu estre seisi de rente par nostre meyne, quel ne puit estre forsque de verray tenant, del⁵ houre qe cely qi estat il ad en la seignurie⁶ accepta cele qi estat nous avoms⁷ com⁸ verroi tenant, *ut supra*, si sur altre qe nous poet⁹ avower.—*R.*¹⁰ *Thorpe*. Nous vous dioms qe Thomas de Bethum feffa¹¹ Hawyse en la manere come nous avoms dit; prest, &c. *Et alii e contra*¹². Et al remenant dount vous parlez lei¹³ ne nous¹⁴ mette pas¹⁵ a respondre—*Pole*. Et nous jugement, del houre qe vous¹⁶ navez pas dedit qe Isolde, qi estat nous avoms, nattourna a Cristiene de Lyndeseye heir celuy¹⁷ qi estat vous clamez¹⁸ en la seignurie de fealte, qe ne poet estre fait forsque par mayn de verray tenant, qar la resceite afferme¹⁹ privite entre eux, et nous serroms a mesme lavantage qe²⁰ Isoulde qi estat nous avoms serroit; jugement, si sur altre qe nous,²¹ &c., ou si al remenant dount vous parlez serroms mys de²² respondre,

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¹ L., seisine.

² 16,560, fut attendant, instead of si attourna de sa fealte.

³ L., Cristine; 25,184, Cristeane.

⁴ T., 16,560, and 25,184, Councy.

⁵ In 25,184 the word jugement is inserted before del.

⁶ The words en la seignurie are from L. alone.

⁷ L., jeo ad, instead of nous avoms.

⁸ com is from L. alone.

⁹ L., poyez.

¹⁰ R. is not in 25,184.

¹¹ 25,184, enfeffa.

¹² The words *Et alii e contra* are from 16,560 alone.

¹³ L., qe ley.

¹⁴ Harl., vous.

¹⁵ pas is from T. alone.

¹⁶ vous is not in Harl.

¹⁷ The words de Lyndeseye heir celuy are omitted from 16,560.

¹⁸ L., aves.

¹⁹ L., afferma.

²⁰ L., com; Harl., et.

²¹ L., sour nous.

²² L., a.

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inasmuch as we allege, in order to make us privy, matters done more recently than the cause shown by you by which you would estrange us.—*Stouford*. And we pray judgment, since you do not deny the feoffment made to Hawise, as above; and, as to that which you say of Isolda, you do not show how she came to be tenant so that the receipt of her fealty would make her privy, nor do you show how you have her estate, and so we are strangers both on one side and on the other, so far as regards Isolda; judgment whether the law puts us to answer to this.—*Pole* waived that, and said that Hawise was enfeoffed in fee simple without the condition of paying the cornage over to the chief lord.—*R. Thorpe*. We have said that she was enfeoffed in tail and by the condition of holding of the donor, so that if you wish to traverse us you must traverse by saying that she was not enfeoffed to hold of the donor; for if she was enfeoffed to hold of the donor, though without the condition of performing the services to the chief lord, &c., if she paid the rent to the chief lord, which might be done by any one who chose to pay it, that does not estrange the chief lord from his tenant.—*W. Thorpe*. Then waive the advantage of the condition, and on that we will abide judgment in law with you at all hazards; and we do not understand that the feoffment made on the condition alone

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desicome nous allegeoms¹ chose² fait plus³ tardif de nous faire⁴ prive qe vostre cause nest par quele vous nous voillez estraunger.—*Stouff*. Et nous jugement, del houre qe vous ne deditez pas⁵ le feffement fait a Hawyse, *ut supra*; et ceo qe vous parlez de Isolde vous ne moustrez⁶ pas coment ele avynt destre tenant issi qe resceite de sa feaute luy freit prive, ne vous moustrez⁶ pas coment vous avez soun estat, et issi sumes estraunge dune part et daltre a parler de Isolde; jugement si a ceo ley nous⁷ mette a respondre.—*Pole weyva cella*, et dit qe Hawyse fuit feffe en fee simple saunz condicion de faire le cornage⁸ outre a chief seignur.—*R.⁹ Thorpe*. Nous avoms dit qele fuit feffe¹⁰ en taille¹¹, et¹² par la condicion de¹³ tenir del donour,¹⁴ issi si vous voillez traverser nous il covynt qe vous traverses¹⁵ qe ele fut pas feffe a tener del donour; qar si ele fuit feffe a tener del donour, tut saunz condicion de faire les services au chief seignur, &c., si ele fait la rent a chief seignur, quele poet estre fait par chesqun qe la voet¹⁶ paier, ceo nestraunge pas le chief seignur de soun tenant.—*W. Thorpe*. Weyvez donqes lavantage de la condicion, et sur ceo nous demoroms en jugement ovesqe vous¹⁷ en ley a touz perils; et nous nentendoms¹⁸ qe le feffement fait par la condicion seulement

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¹ Harl., allegioms.

² chose is from L. alone.

³ 25,184, de plus.

⁴ L., quele nous fait, instead of de nous faire.

⁵ pas is not in L.

⁶ L., moustrezerez.

⁷ Harl., na.

⁸ 25,184, cornage.

⁹ R. is omitted from L., 25,184, and Harl.

¹⁰ 25,184, enfeffe.

¹¹ 25,184, en la taille.

¹² et is omitted from Harl.; there

are substituted for it in 25,184 the words par la taille.

¹³ Harl., a.

¹⁴ After the word donour are inserted in 25,184 the words qar si ele fut feffe de tener del donour.

¹⁵ The words nous il covynt qe vous traverses are omitted from L.

¹⁶ L., vyut.

¹⁷ The words ovesqe vous are omitted from L.

¹⁸ So in Harl.; the other MSS. entendoms,

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1341-2.

ousts us from our plea which we take in abatement of the avowry; and this feoffment in manner we have traversed; judgment, whether this ought not to be sufficient for us.—*Derworthy*. You ought to traverse everything whatsoever we set forth for issue, and not take averment as to parcel.—*W. Thorpe*. You would that we should traverse as to the person of whom Hawise held by the feoffment, and that is not to the purpose; and you make a surmise to us that she was enfeoffed to hold of the donor, and we do not deny it; therefore there is no need to aver a matter not denied; and, therefore, if it seems to you that this can avail you, abide judgment as on a matter not denied.—*R. Thorpe*. Certainly this is the matter which would properly make an issue; for if the tenant in demesne, although he be enfeoffed without the condition of holding of his feoffor, pay a rent, which may be done by the hand of a bailiff, to the lord paramount, that shall never be adjudged an attornment to the latter; and I say that we can never have that point holden as not denied by you until the inquest shall have passed for us as to the rest.—And afterwards they had a day *prece partium*.—See the continuation, and how issue was taken on the manner of the feoffment, and not as to the person of whom to be holden, in Michaelmas term next.¹

¹ The record cited in the note above (p. 33, note 15, &c.) shows, at p. 35, the terms of the issue.

No. 9.

nous ouste de nostre¹ plee quele nous pernoms² al³ abatement del avowere, quel feffement par⁴ la manere nous avoms traverse; jugement, si ceo ne nous deyv⁵ suffire.⁶—*Derworth*. Vous devez traverser tut quantqe nous donoms pur issue, et noun pas sur parcelle prendre averement.—*W.^r Thorpe*. Vous voudrez qe nous traversames de qi Hawise tendreit par le feffement, et cella nest pas a purpos; et vous nous⁸ surmettez qe ele fuit feffe a tener del donour, et nous ne le dedioms⁹ pas, par quei chose nynt dedit ne¹⁰ bosoigne ja daverer; et pur ceo sil vous semble qe ceo purra¹¹ valer¹² a vous, demorez en jugement come sur chose¹³ nynt dedit.—*R. Thorpe*. Certes cest la chose qe proprement freit issue; qar si le tñant en demene, tut soit il feffe saunz condicion a tener de soun feffour sil face rente qe purra¹⁴ estre fait par mayn de baillif au seignur par amount, ceo ne serra jammes ajugge attournement a luy;¹⁵ et jeo dye qe nous ne poms jammes¹⁶ aver cel point tenu nynt dedit de vous tanqe lenquest serra passe del remenant pur nous.— Et puis *habuerunt diem prece utriusque partis*.¹⁷—*Vide residuum* et issue prist sur la manere du feffement, et ne mye de qi a tener *M. proximo*.¹⁸

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1341-2.¹ 25,184, vostre.² Harl., prioms.³ 25,184, en.⁴ L. and 16,560, et.⁵ L. and 25,184, deit.⁶ T., soeffrer; Harl., suffrier.⁷ W. is not in 25,184.⁸ vous is not in 25,184.⁹ Harl., demandoms.¹⁰ ne is from L. alone.¹¹ 16,560, purreit; Harl., purrets.¹² Harl., vailler.¹³ chose is not in Harl.¹⁴ purra is not in Harl.¹⁵ The words a luy are not in Harl.¹⁶ jammes is not in 25,184.¹⁷ The report ends here in all the MSS. except 25,184 and Harl.¹⁸ For the last sentence there is substituted in Harl., Puis issu pris sur la manere del feffement.

No. 10.

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1341-2.
Waste
against
guardian
in socage.
After ver-
dict the
Court was
minded to
abate the
writ.

(10.) § Waste, pleaded to the Inquest, and the Jury now came.—*Thorpe*. The waste is assigned in three manors, that is to say, in cutting trees—oaks, ashes, and apple trees—and it is not determined with certainty in what gardens nor in so many acres of wood; and thus the count is uncertain; wherefore on such an uncertain declaration you can not proceed to the taking of this inquest.—HILLARY. The inquest is awarded by us, wherefore it ought to be taken; and, notwithstanding your exception, we consider the declaration sufficiently certain, for we will enquire thereof by the inquest.—And the Inquest was called; and it was asked of them whether they had made the view; and they said Yes.—KELSHULLE. The defendant has said that she held the third part of a manor, in name of dower, on the day of the purchase of the writ, and not in wardship, and she has demanded judgment of the writ; wherefore you shall enquire of that first of all, and if you find the tenancy to be such, you shall not enquire further; and if you find that she held in wardship, you shall then enquire over of the waste.—And it was found that all the manors are holden in socage, and that the woman, on the day on which the writ was purchased, held the whole in name of wardship by reason of nurture, but, pending this writ, she was endowed of the third part of the manor of Creak by the Earl of

No. 10.

(10.)¹ § Wast, plede a lenqueste qe vynt ore.—
Thorpe. Le wast est assigne en iij manoirs, saver de³
 couper des arbres, keynes,⁴ freynes, pomers,⁵ et nest
 pas⁶ determine en queles⁷ certeyns gardyns nen
 taunt des acres de bois; issi le⁸ counte en noun-
 certeyn; par quei sur tiele moustraunce⁹ nouncerteyn
 vous ne poez nynt aler a la prise de cette enquest.—
HILL. Lenquest est agarde par nous, par quei il la
 covynt estre pris, et *non obstante* vostre challange nous
 lentendoms assez en certeyn, qar nous enquerroms de
 ceo par lenqueste.—Et lenquest demande; et¹⁰ fuit
 demande¹¹ deux¹² sil avoint fait la vieve, qe disoint
 qe oil.—*KELS.* La¹³ defendante ad dit qele tynt la
 terce partie¹⁴ dun manoir, en noun de dower, jour de
 bref purchace, [et noun pas en garde, et ad demande
 jugement du bref];¹⁵ par quei de ceo vous¹⁶ enquerrez
 primes, et, si vous troverez la tenance tiele, enquerrez
 nynt pluis; et si vous troverez qele tynt en garde,
 enquerrez donques outre¹⁷ del wast.—Et trove fuit qe
 touz¹⁸ les manoirs sount¹⁹ tenuz²⁰ en sokage, et²¹ qe la
 femme, jour de bref purchace, tynt²² tut²³ en noun
 de garde pur resoun de nurture, mes, pendaunt cesty
 bref, ele est dowe de la terce partie del manoir de

A.D.
 1341-2.
 Wast vers
 gardeyn
 en sokage.
 Apres ver-
 dit Courte
 fu en
 purpos
 dabatre le
 bref.²
 [Fitz.
 Wast,
 100.]

¹ From T., 16,560, 25,184, and Harl., the case being omitted from L.

² The whole of the marginal note subsequent to the word wast is from Harl. alone. In 25,184 are the words *Supra*, M. xiiij, which may be a reference to Y.B., M., 14 E. 3, No. 88.

³ 25,184, en.

⁴ keynes is not in 25,184.

⁵ 16,560, pomers, &c.

⁶ pas is not in Harl.

⁷ queles is from Harl. alone.

⁸ Harl., il.

⁹ Harl., demoustrance.

¹⁰ The words demande et are not in 25,184.

¹¹ demande is not in 16,560.

¹² deux is omitted from 25,184 and Harl.

¹³ T., le.

¹⁴ partie is not in 25,184.

¹⁵ The words between brackets are not in 25,184.

¹⁶ Harl., nous.

¹⁷ outre is not in 25,184.

¹⁸ touz is not in Harl.

¹⁹ 25,184, qe sount.

²⁰ tenuz is not in Harl.

²¹ et is not in 25,184.

²² 25,184, les tynt.

²³ tut is omitted from 16,560 and 25,184.

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A.D.
1341-2.

Warene,¹ and she entered. And the Inquest said moreover that she had committed waste to the amount of £40, besides felling trees, which she had avowed as being for the repair of houses, and lopping trees.—And they were compelled to say in what place, and in respect of what trees, and the value of the trees.—And the Inquest said the felling of oaks was done in hedges which stood around a close.—And HILLARY enquired as to the value of the wardship until the full age of the plaintiff. And this he did because of the judgment which has to be given in Waste committed by guardian.—And he enquired also as to the age of the infant.—*Thorpe*. A woman, guardian in socage, who is dowable, can endow herself, and especially in a case in which the whole is socage, for she can not demand dower against another who could bar her by reason that she holds in socage; therefore she might take dower *de la plus belle*, in which case she would be endowed by judgment of that which she held in wardship; therefore it is right that, when she held the whole of the heritage which is socage, the third part should be adjudged as dower, and thus it is found that the woman held the third part in name of dower before the purchase of the writ, and so all the writ is abated.—HILLARY. A guardian in socage shall not, any more than another woman, be ever endowed by herself without judgment, but in her account she shall recoup so much of the issues as relates to her dower, and shall wait for her dower until another can assign it. And thus the reverse of the woman's issue is found; but, nevertheless, as some

¹ i.e. probably, John de Warene, Earl of Surrey.

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Crek¹ par le Counte de Garreyne² qentra. Et disoient outre qe ele avoit fait wast a la mountaunce de xl³li., forpris labatement des arbres, quel ele avoit avowe en amendement des mesouns, et le brauncher⁴ des arbres.—Et furent chacez a dire en quel lieu, et des quels arbres, et le pris des arbres.—Et lenqueste dit qe labatre de keynes fuit fait en haies⁵ qe esteurent⁶ envirroun un clos.—Et HILL. enquist de la value de la garde tanqe al pleyn age le pleintif. Et ceo fist il pur le jugement qe covynt estre fait en wast fet par gardeyn.—Et auxi il enquist⁷ del age lenfaunt.—*Thorpe.* Femme, gardeyn en sokage, qest dowable, se poet mesme dower, et nomement en cas quant tut⁸ est sokage, qar ele ne put demander dower vers altre qe la purreit barrer par cause de ceo qele⁹ tient en sokage; par quei ele se purreit prendre de pluis bele,¹⁰ en quele cas par jugement ele serreit dowe de ceo qe ele tynt en garde; par quei il covynt qe quant ele tynt lentier del heritage qest sokage qe la terce partie soit ajuge de dower, et i-si est ceo trove qe la femme tynt la terce partie en noun de dower avant le bref purchace, issi tut le bref abatu.—HILL. Gardeyn en sokage nynt pluis qe altre femme jammes par luy mesme serra dowe saunz jugement, mes en son accompt ele recoupera taunt de les issues come affiert¹¹ a soun dower, et attendra¹² de soun dower tanqe altre la purra assigner. Et issi est le revers¹³ de la mise la femme trove; mes nepurquant, a ceo qe asquns quident,

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1341-2.¹ 25,164, C.² 25,164, Gayreyne.³ T. l.⁴ Harl., branches.⁵ 16,560, hoyes; 25,184, hays.⁶ 16,560 and Harl., esturent.⁷ The words il enquist are omitted from Harl.⁸ 16,560, conust.⁹ T., qil.¹⁰ 16,560 and Harl., beale.¹¹ 25,184, afferit; 16,560, afferit.¹² T. and 25,184, tendra.¹³ T. and 25,184, reversion.

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1341-2.

think, this writ does not lie against a guardian in socage.—*Stouforde*. It does; for guardian in socage is guardian and may recover wardship and lose it.—BASSET. You never saw a writ of wardship maintained for wardship in socage; but, if a stranger, who has no right, occupy the wardship, Assise lies for the infant, if he please, or a writ of Account, at his full age.—And this was admitted as to wardship of land; but as to wardship of the body a writ lies for the next friend to demand the wardship, and also a writ of Ravishment of Ward.—HILLARY. That is all for the profit of the heir, and of that he will render an account. And against tenant by Statute Merchant, if he commit waste, no other remedy is given but by way of Account; nor is there in this case.—KELSHULLE. A writ of Account does not lie for uprooting houses.—HILLARY. PARNING the Chancellor and I have spoken together of this matter, and it seems that the writ does not lie. And he said that he would rather give a writ of Trespass in this case than a writ of Waste.—*Stouford*. The writ is accepted as good by the Court and by the party, wherefore we pray judgment on the verdict.—HILLARY. The writ was not adjudged good by the Court, and although the party did not take exception to it, it is for us to see to it.—They were adjourned.

Mort
d'Ance-
stor. And
note that
it is not
the form

(11.) § Mort d'Ancestor. Summon twelve men of the visne "*villæ de Westmonasterio*," &c., ready by oath to acknowledge whether, &c., died seised of eight feet of land in length and six in width, and of two parts

No. 11.

ceo bref ne gist pas vers gardeyn en sokage.—*Stouff.*¹ Si fait; qar² gardein est il et poet recoverir garde et perdre.—*BASS.* De garde³ en socage unques ne veistez bref de garde estre mayntenu; mes, si⁴ estraunge, qe nad pas resoun, occupe la garde, pur lenfaunt gist lassise sil voet, ou bref dacompte, a son pleyn age; *quod fuit concessum* en dreit⁵ de garde de terre; mes de garde de corps gist bref pur⁶ procheyn amy a demander la garde et auxi ravisement de garde.—*HILL.* Cest tut en profit leir, et de quei il rendra accompte; et vers tenant par statut⁷ marchaunt,⁸ sil face wast, altre remedie nest done forsque par voie dacompte; *neque hic*.—*KELS.*⁹ Daracer de mesouns ne gist pas bref dacompte.—*HILL.* Entre *PARN.* le Chauncelier et nous si avoms parle de ceste matere, et semble qe le bref ne gist nynt. Et il¹⁰ dit qil durreit plus toust bref de trespas en ceo cas qe bref¹¹ de Wast.—*Stouff.* Le bref est accepte pur¹² bon par Court et partie, par quei sur verdit¹³ nous prioms jugement.—*HILL.* Ceo nest pas agarde bon par Court, et tut nel challengea pas partie, a¹⁴ nous est a veer.—*Adjournantur.*¹⁵

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(11.)¹⁶ § Mortdancestre. "Summoneas xij, &c. de visneto villæ de Westmonasterio, &c. parati sacramento recognoscere si,¹⁷ &c., obiit seisitus de viij pedibus terræ in longitudine et sex in latitudine, et¹⁸ duabus partibus

Mort dandancestre. *Et nota* qe ce nest mye forme de bref a de-

¹ 25,184, *Thorpe*.

² qar is not in 16,560.

³ 25,184, *gardein*.

⁴ *Harl.*, a.

⁵ 25,184, *bref*.

⁶ *Harl.*, de garde de, instead of pur.

⁷ *Harl.*, estatut.

⁸ 25,184, de marchaunt.

⁹ *Harl.*, *HILL*.

¹⁰ il is not in *Harl*.

¹¹ bref is not in *Harl*.

¹² pur is not in 16,560.

¹³ 16,560, verdist.

¹⁴ T., il.

¹⁵ In 25,184 are added the words *Sic nota* de bref qest accepte bon de partie.

¹⁶ From T., 16,560, 25,184, and *Harl.*, the case being omitted from L.

¹⁷ The words sacramento recognoscere si are omitted from *Harl*.

¹⁸ The words et sex in latitudine et are omitted from *Harl*.

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1341-2.
of the writ to demand a piece [of land] which contains so many [feet] &c., but the feet ought to be assigned with certainty by the demand in the writ. It is otherwise when there is a question as to a plaint in assise of Novel Disseisin, as above, in Trinity Term in the 14th year.¹

of one messuage, and the moiety of two parts of one messuage, and of 6*d.* of rent, &c. *in villa Westmonasterii*, and in the mean time let them view the messuage, land, and tenements, whence the rent issues.—*Thorpe*. Judgment of the writ in which are the words “so many feet in length and breadth”; for in an assise of Novel Disseisin the plaint should be in such case in respect of a piece [of land] containing so many feet, so that the principal thing demanded should be the piece [of land] and not the feet.—*Pole*. One shall never have in a writ a demand for a piece, which is uncertain.—*Thorpe*. Still, judgment of the writ; for the twelve jurors of the assise shall be of the same visne in which the demand is made; now one [clause] mentions the visne *villæ de Westmonasterii* for summoning the jurors, and the demand is *in villa Westmonasterii*.—*Pole*. Such is the form, and they can not be understood to be different villis.—*Thorpe*. The clause for making the view ought to be pursuant to the first clause in which the demand is made; and in the demand the land is first demanded, and then the moiety of the messuage, &c., and in the clause for making the view the messuages are named first.—*Pole*. That is right; for in the demand first of all that which is entire ought to be mentioned, and then that which is not entire, as a moiety or a third part; but afterwards when the view is to be made, because the entire messuages will be first put in view, the form is to put the messuages before land.—*Thorpe*. Certainly, no more shall be put in view than is demanded, so that in that respect the writ is bad.—*Pole*. What you say is wrong; for if two parceners

¹ The reference is possibly to Y.B., T., 14 E. 3., No. 2.

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unius mesuagii, et medietate duarum partium unius mesuagii, et sex denariatis redditus, &c., in villa Westmonasterii, et interim mesuagium, terram,² et tenementa, unde redditus provenit, videant." — *Thorpe*. Jugement du bref, qe voet tauntz des pees en longure et en³ lees; qar en assise de novele disseisine la pleynte serroit⁴ en tiel cas dune place qe contient taunt des pees, issi qe la principale demande serroit la place et noun pas les pees.—*Pole*. Homme navera jammez demande en bref dune place, qest en noun-certeyn.—*Thorpe*. Unquore jugement du bref, qar les xij de lassise serrount de mesme le visne qe la demande est fait; ore lun est del visne *villæ de Westmonasterio* de somoundre les jurrours, et la demande⁵ est *in villa Westmonasterii*.—*Pole*. Tiele est la forme, et il ne pount⁶ estre entendu divers⁷ villes.—*Thorpe*. La clause⁸ de faire la viewe deit estre pursiwaunt al primere clause [ou la demande est fait; et en la demande la terre est primes demande, et puis la moite del mies, &c., et en la clause]⁹ de faire la viewe les mies sount primes nomes.—*Pole*. Cest resoun; qar en la demande primes ceo qest entier deit estre nome, et puis ceo qe nest pas entier, come moite ou terce partie; mes puis quant la viewe deit estre fait, pur ceo qe les mies entiers serrount primes¹⁰ mys en viewe, la fourme est¹¹ de mettre mies avant terre.—*Thorpe*. Certes¹² pluis ne serra mys en viewe qe nest demande, issint en cella le bref est malveis.—*Pole*. Vous dites

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mander
une place
qe tient
tant, &c.,
mes deit
estre as-
sinne en
certeyn
par la de-
mande en
le bref.
Aliter cum
est de
pleynte en
assise de
novele dis-
seisine, *ut*
supra,
Trinitatis
xiiiij.⁽¹⁾
[16 li.
Ass.2; Fitz.
Briefe,
650.]

¹ The whole of the marginal note, subsequent to the word Mordancestre, is from 25,184 alone. In T., the note is *Assisa Novæ Disseisinæ*.

² terram is not in Harl.

³ en is from Harl. alone.

⁴ Harl., serra.

⁵ T., secunde.

⁶ T., puit; 16,560, poient; 25,184, poet.

⁷ T., de divers.

⁸ Harl., cause.

⁹ The words between brackets are not in 25,184.

¹⁰ primes is omitted from 16,560 and Harl.

¹¹ est is not in 25,184.

¹² Certes is not in 16,560.

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1341-2.

hold in common, the issue of her who first dies will have Mort d'Ancestor against the other in respect of a moiety, and because she does not demand a certain moiety, but *per my et per tout*, the whole shall be put in view.—*Skipwith*. She will state her case to the jurors, and will put the moiety *per my et per tout* in view; and in a *Præcipe quod reddat* if a moiety be demanded, view shall be had only of what is demanded, for otherwise mischief will ensue; for if the demandant be compelled to put the whole in view when he demands a moiety, the writ will be abated for nontenure of the thing which was not demanded, for the tenant can choose his exception of nontenure either as to the demand or as to the tenements put in view.—HILLARY. We have seen such a writ maintained by judgment in a Mort d'Ancestor and a Formedon at York before HERLE; and one would do the Demandant wrong to abate this writ when he can not have any other.—*Thorpe*. You abate a writ brought in respect of a manor, for nontenure of an advowson; and in the Chancery they will not in the writ except the advowson.—And afterwards HILLARY adjudged the writ to be good.—*Thorpe*. There ought not to be assise; for a note of a fine was levied on a writ of Covenant in the fifth year of the present King, between Roger Schirburne and one A. of the one part, and B., mother of the demandant, of the other part, by which B. acknowledged the tenements to be the right of Roger,

No. 11.

mal; qar si deux parceners teignent¹ en comune, lissue de cele qe primes deviera avera le Mortdauncestre vers lautre de la moite, et pur ceo qe ele² ne demande pas certeyn moite, mes par my et par tut, tut serra mys³ en viewe.—*Skip*.⁴ Ele dirra soun⁵ ces as jurours et mettra la moite par my et par tut en viewe; et en un *Præcipe quod reddat* si moite soit demande, la viewe se fra⁶ forsque de la demande, qar autrement ensiwera meschief; qar si le demandant⁷ serra⁸ chace de mettre tut en viewe ou il demande moite, homme abatera le bref⁹ pur¹⁰ nountenue de chose qe nest pas demande, qar le tenant puit choser¹¹ sa excepcion par nountenue a la demande ou a les tenementz mys en viewe.—*HILLAR*. Nous avoms vewe¹² tiel bref mayntenu par agard, et Mortdauncestre et Forme de doun a Everwyk devant¹³ *HERLE*; et homme ly freit tort dabatre ceo bref ou il ne puit aver altre.—*Thorpe*. Vous abates¹⁴ bref¹⁵ porte dun manoir par nountenue davowesoun; et en Chauncellerie ils ne voleient forprendre avowesoun en bref.—Et puis *HILL*. agarda le bref bon.—*Thorpe*. Assise ne deit estre; qar¹⁶ sur bref de covenant note se leva lan quinte le Roi qe ore est, entre Roger Schirburne et un A. dune part, et B., mere¹⁷ le demandant, daltre part, par quele B. conust les tenementz [estre le dreit Roger, et graunta

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1341-2.

¹ 16,560, teignent; 25,184, tyment; Harl., tenent.

² 16,560, la vewe, on an erasure.

³ Harl., il covent mettre soi, instead of tut serra mys.

⁴ Harl., *Thorpe*.

⁵ 25,184, en soun.

⁶ T., serra, 16,560, ne fra, Harl., serra fait, instead of se fra.

⁷ Harl., demande.

⁸ T., 16,560 and Harl., serroit.

⁹ The words le bref are from Harl. alone.

¹⁰ 25,184, a.

¹¹ 25,184, choisir.

¹² The words *HILLAR*. Nous avoms vewe are omitted from T.

¹³ 25,184, par.

¹⁴ T., abatres.

¹⁵ T., un bref.

¹⁶ qar is not in T.

¹⁷ Harl., pere.

No. 12.

A.D.
1341-2.

and granted that the same tenements, which G. held for term of his life, and which after his death were to revert to her, should remain to Roger and A. and the heirs of Roger; and G. leased these tenements to us for the term of 5 years; and after the death of G. and A., Roger, in whom the right reposed, released to us all his right by this deed; judgment, since his mother, whose heir he is, after the death of his uncle on whose seisin he demands, divested herself of right, whether he ought to have assise.—And the note of the fine was immediately fetched and read.

Attaint.
See the
beginning
above in
Hilary
Term in
the four-
teenth
year.¹
And note
that it was
now al-
leged for
the plain-
tiff that
distress
had been
made, but
the Court
would not
enquire of

(12.) § The jury of twenty-four said that the jurors of the petty jury had made a false oath, inasmuch as they said that the manor of Elledene was not given to the ancestor of John the son of Thomas de Brembleshete (uncle of Lawrence who now is plaintiff), and the heirs of his body begotten, according to that which John supposed by the writ of Formedon which he brought, for the donor did give as John supposed by his writ. And the COURT enquired as to the value of the land since the death of John, uncle of Lawrence, who is plaintiff; and it was assessed at £50.—BASSET. The Court adjudges that Lawrence shall recover his seisin against the tenants, and the issues, &c.; and because

¹ Y.B., Hil., 14 E. 3, No. 11, where see the names of the parties &c., as given in the record.

No. 12.

que mesme les tenementz],¹ qe G. tynt a terme de sa² A.D. 1341-2.
 vie, et qe apres son decees a luy deveireint reverter³
 remeyndreint a Roger et A. et les heirs Roger; et
 G. lessa ceux tenementz a nous a terme de v aunz;
 et, apres la mort G. et A., Roger, en qi le dreit reposa,
 relessa a nous tut son dreit par ceo⁴ fait; jugement,
 de puis qe sa mere,⁵ qi heir il est, apres la mort soun
 uncle de qi seisine il demande, soi demist de dreit, sil
 deyve assise aver.—Et la note⁶ fuit quis tauntost et lieu.

(12.)⁷ § La Jure de xxiiij dit qe ceux⁸ de la petit Atteinte.⁸
 xij avoint fait faux serement,¹⁰ en taunt com ils *Vide principium*
 disoient qe le manoir de Elledene¹¹ ne fuit pas done *supra*
 al auncestre¹² Johan fitz Thomas de Brembleshete,¹³ *Hilarii*
 oncle¹⁴ Laurence qe ore est pleintif,¹⁵ et a les heirs *xiij. Et nota pur le*
 de soun corps engendrez, solonc ceo qe Johan supposa *pleintif fut*
 par le bref de fourme de doun quel il porta, qar il *allegge ore*
 dona auxi come Johan supposa par soun bref. Et *qe destres*
 COURT enquist de la value de la terre puis la mort *fut fait,*
 Johan oncle¹⁴ Laurence qe se pleynt, qe fuit taxe a *sed Curia*
 lii.¹⁶—BASSET. Si agarde la COURT qe Laurence re- *noluit de*
 coveria sa seisine vers les tenantz et les issues, &c.;¹⁷ et *hoc in-*
quirere . .
. . . ut
supra . .
 bref de Faux
 Jugement.

¹ The words between brackets are not in 25,184.

² sa is not in Harl.

³ T., &c., instead of deveireint reverter.

⁴ Harl., se.

⁵ Harl., son pere instead of sa mere.

⁶ 25,184, moite.

⁷ From T., 16,560, 21,584, and Harl., the case being omitted from L. For the record of this case see Y. B. Hil., 14 E. 3, No. 11.

⁸ The whole of the marginal note subsequent to the word Atteinte is from 25,184 alone. In Harl., the note is Atteinte; jurors atteintz.

⁹ 16,560, ses.

¹⁰ 25,184, seornment.

¹¹ 25,184 and Harl., Elledone.

¹² Harl., a instead of al auncestre.

¹³ T., Brembrestede; 16,560, Brumburhede; 25,184, Brembrestede.

¹⁴ The MSS. of Y. B., pere.

¹⁵ 16,560 and Harl., qore se pleint, instead of qe ore est pleintif.

¹⁶ 16,560, cynk cent lii., instead of lii.

¹⁷ In 16,560 are added the words *ut supra, sed non damages*, but this seems to be wrong, as the record shows that judgment was given for damages in express terms as well as seisin.

No. 13.

A.D.
1341-2.
this, as
above
upon a
writ of
False
Judgment.
Note,
neverthe-
less, that,
both in
the one
case and
in the
other, the
heir re-
covered
seisin.

all of the petty jury are dead, except four, as the Sheriff has testified, the COURT adjudges that those four do lose their free law for ever, and that their chattels be forfeited, and that their lands and tenements be seized into the King's hands, and their wives and children thrust out, and their houses and lands wasted, and that they be taken, and that the tenants be amerced, &c.; but the tenants shall not be taken, because they were not parties to the petty inquest.—*R. Thorpe*. Roger Wodelok¹ maintained the first oath to be good; therefore it seems that he ought to be imprisoned.—*BASSET*. He shall not be; for that point has been disputed.—And note this.

Escheat of
land and of
rent.

(13.) § Escheat of land and rent.—As to part of the rent, *Thorpe* said that it is a rent which he receives by the hands of his bondmen as of his villenage; judgment of the writ. And as to the rest of the rent and all the land he vouched to warranty, except as to a parcel as to which he said that the tenant in his lifetime divested himself in fee.—Against this the demandant was admitted to maintain his writ, that is to say, to the effect that the tenant died seised.—And the other side said the contrary.—*Rokell*. As to that which he pleads in abatement of the writ, he has admitted that he is tenant of the demesne, and he does not shew that any other person is tenant of that which we demand; judgment, and we pray seisin.—*W. Thorpe*. Since we shew that we are tenant of the rent in a manner, but not of such an estate that the writ lies

¹ Roger, son of Roger Wodelok, was tenant in the Attaint, according to the record.

No. 13.

pur ceo qe ceux de la petite xij sount touz mortz, salve iiij, come le Vicounte ad tesmoigne, la COURT agarde qe ceux iiij perdent¹ fraunche ley a touz jours, et qe lour chateux soient forfaitz, et qe lour terres et tenementz soient seisiz en la meyn le Roi, et femmes et enfauntz oustes, et mesouns et terres estrepes, et qils soient pris, et les tenantz amercies,² &c.; et ils³ ne serrount pas pris, pur ceo qils ne furent pas parties al petit enqueste.—*R. Thorpe*. Roger Wodelok⁴ meyntient le primer serement pur bon; pur ceo semble qil est emprisonable.⁵—*BASSET*. Noun serra; qar cele chose ad este despute.—*Et hoc nota*.⁶

A.D.
1341-2.
*Nota tamen
in uno
casu et alio
qe heir
recovery
seisine.
[Fitz,
Damage,
1.]*

(13.)⁷ § Eschete de terre et rente.—Quant a partie de la rente *Thorpe* dit qe ce est rente quele il resceit par meyns de ses⁹ bondes come de soun villenage; jugement du bref. Et quant al remenant de la rente et tote la terre il voucha a garrant, sauf¹⁰ une parcellle dount il dit qe le tenant en sa vie se demist en fee; countre quei le demandent fuit resceu de mayntenir soun bref, cest a dire,¹¹ qe le tenant morust seisi.—*Et alii e contra*.—*Rokel*. Quant a ceo qil plede al abatement du bref, il ad conu qil est tenant del¹² demene, et il ne moustre pas qe altre soit tenant de nostre demande; jugement, et prioms seisine.—*W. Thorpe*. Del houre qe nous moustroms qe nous sumes tenant¹³ de la rente en manere, mes ne mye de tiel estat qe

Eschete de
terre et de
rente.⁸

¹ 16,560, perdrent.

² 16,560 and Harl., en la mercy.

³ T., sils, instead of &c. et ils.

⁴ T., Wodestoke.

⁵ 25,184, prisonable.

⁶ The last sentence is from 25,184 alone.

⁷ From T., 16,560, 25,184, and Harl., the case being omitted from L.

⁸ The words de terre et de rente

are from Harl. alone. In 25,184 is added:—"Concordat supra Hillarii viij^o, bref de custodia de rente, et vide supra Hillarii xiiij, bref dengettement, &c."

⁹ T., cea.

¹⁰ Harl., Rauf, et quant a.

¹¹ The words cest a dire are omitted from T.

¹² del is not in Harl.

¹³ Harl., tenance.

No. 14.

A.D.
1341-2.

against us, it thus seems that you shall not be admitted to maintain your writ generally, unless you show that at some other time we were tenant of that which you demand.—*R. Thorpe*. And we demand judgment, since you do not deny the points of our writ, and have admitted that you are tenant of the land, and do not make any other person to be tenant of that which we demand; judgment, and we pray seisin.—*W. Thorpe*. We tell you that he whom you suppose to have been your tenant held the demesne, and received the rent through the hands of peasants and villeins, and thus he held the land and not the rent; judgment of the writ.—*R. Thorpe*. If he will say that he held the demesne of us, then he puts us to reply; and otherwise it is only a traverse to the effect that he did not hold the rent of us; ready, &c., that he held the rent of us as we suppose.—*W. Thorpe*. He held the demesne and not the rent; ready, &c.—And the other side said the contrary.—And note that the plea of *W. Thorpe* shall be entered.—They were adjourned.—And note that after the adjournment the roll was amended, on the prayer of the tenant, when the demandant had gone with his day, because the Justices recorded that the roll did not accord with the plea.

Note.
Mort
d'Ance-
tor.

(14.) § Note that in an assise of Mort d'Ancestor *Gayneford* pleaded non-tenure, in abatement of the writ, and if a verdict be found, ready to hear the acknowledgment (or finding) [of the Assise].

No. 14.

bref gist vers nous, issint semble qe vous ne serrez¹ resceu de mayntenir vostre bref generalment, si vous ne moustrez qe a autre temps nous fumes² tenant³ de vostre demande.—*R. Thorpe*. Et nous jugement, del heure qe vous ne deditez pas les pointz de nostre bref, et avez conu estre tenant de la terre, et autre ne faites⁴ tenant de nostre demande; jugement, et prioms seisine.—*W. Thorpe*. Nous vous dioms qe celui qe vous supposez vostre tenant tynt le demene,⁵ et resceit⁶ la rente par mayne des paisanz⁷ et⁸ villeyns,⁹ issint tient il la terre et noun pas la rente; jugement de bref.—*R. Thorpe*. Sil voet dire qil tynt de nous le demene, donques nous mette il a respondre; et autrement nest ceo forsque travers qil ne tient pas la rente de nous; prest, &c., qil tynt de nous la rente come nous supposoma.—*W. Thorpe*. Il tynt le demene et noun pas la rente; prest, &c.—*Et alii e contra*.—*Et nota* qe le dit *W. Thorpe* serra entre.—*Adjornantur*.—*Et nota quod post adjornationem*¹⁰ le roule¹¹ fuit amende, a la priere le tenant, quant le demandant fuit ale ove son jour, pur ceo qe les Justices recorderent¹² qe le roule¹³ ne sacorda pas al plee.

A.D.
1341-2.

(14.)¹⁴ § *Nota* qen assise de¹⁵ Mordancestre *Gayn*. *Nota*.
pleda nountenure, al abatement du bref, et, si trove soit, Mordancestre.
prest doier la¹⁶ reconissance.

¹ 16,560, saunz ceo qe vous serrez, instead of vous ne serrez.

² Harl., sumes.

³ Harl., tenance.

⁴ Harl., put estre, instead of ne faites; instead of faites, 16,560 has feistes, T., fetes.

⁵ 16,560, la demande, Harl., la terre, instead of le demene.

⁶ 25,184, resceut.

⁷ T., paysayns, 16,560, paysains.

⁸ et is omitted from 16,560 and 25,184.

⁹ Harl., velains.

¹⁰ T. qe puis ajournement, instead of *quod post adjornationem*.

¹¹ Harl., rolle.

¹² T., reconiseint.

¹³ Harl., rolles.

¹⁴ From T., L., 16,560, 25,184, and Harl.

¹⁵ The words assise de are from L. alone.

¹⁶ Harl., lour.

Nos. 15-17.

A.D.
1341-2.
Account.
Note the
process,
and note
the judg-
ment.

(15.) § Note that in Account the defendant, who came by *Capias*, produced an acquittance which was denied, and found surety to abide the inquest, and afterwards, on another day, proffered himself by attorney made by writ of the Chancery, which warrant was disallowed. And it was adjudged that the mainpernors should be taken, and that the defendant should be taken to compel him to account.

Note:
Process in
plea of
land.

(16.) § Note. A writ was brought against two; one appeared, and the other made default. When the Grand *Cape* was returnable the latter again made default, and the one who at first appeared was essoined, and the essoin was adjudged; and as to the one who made default judgment was respited, because the one who was essoined would be able to take upon himself the tenancy of the whole.—HILARY said that this is not so.

Note.

(17.) § Note that the Abbot of Bec Hellouin,¹ on a writ of Annuity, recovered, on a “not denied,” against the Abbot of F., the annuity, and the arrears up to the time when the judgment was given, and damages

¹ This appears to be the most probable translation of Bekhelewyn, but it is doubtful whether the report is not of the case of the Abbot of Saint Evroul against the Abbot of Alcester as in the record cited at

p. 69, Note 3. It is hardly probable that there were in the same term two cases in which a Norman Abbot was proceeding against an English Abbot on a writ of Annuity.

Nos. 15-17.

(15.)¹ § *Nota* qen Accompte le defendant qe vynt par *Capias* mist avant acquittance qe fuit dedit, et trova soerte dattendre⁴ lenqueste, et puis, a un altre jour, se profry par attourne fait par bref de la Chauncellerie,⁵ quel⁶ garrant⁷ fuit desallowe. Et agarde⁸ fuit qe les maynpernours fuissent pris, et qe le defendant fuit pris dacompter.

A.D.
1341-2.
Acounte.²
*Nota processum, et Nota judicium.*³
[Fitz.
Attourne,
63.]

(16.)¹ § *Nota*. Bref¹⁰ porte vers ij; lun apparust, lautre fist defaute. Al graunt *Cape* retournable il fist¹¹ autrefoitz defaute, et lautre qe primes¹² apparust¹³ fuit essone, et lessone¹⁴ fuit¹⁵ ajugge; et quant al autre¹⁶ le jugement fuit¹⁷ respite, qar cely qest essone purra reprendre la tenance de lenter.—HILL. *dixit quod non ita est.*¹⁸

*Nota proces en ple de terre.*⁹
[Fitz.
Essone,
162.]

(17.)¹ § *Nota* qe labbe de Bekhelewyn,¹⁹ en bref dannuite, sur nynt²⁰ dedire, recoveri vers labbe de F.²¹ lannuite, et les arrerages [tanqe le jugement rendu, 41.]

Nota.
[Fitz.
Collusion,
41.]

¹ From the five MSS. as above.

² 16,560, *Nota*; Harl., *De compoto*.

³ The words *Nota processum, et Nota judicium* are from 25,184 alone.

⁴ T., *dattayndre*; Harl., *dattayndre*.

⁵ The words de la Chauncellerie are from L. alone.

⁶ Harl., *qile*.

⁷ *garrant* is not in L.

⁸ Harl., *ajuge*.

⁹ The words *proces en ple de terre* are from 25,184 alone. The marginal note in Harl. is *Bref vers ij*.

¹⁰ *Bref* is not in L.

¹¹ L., *fut*.

¹² L., *avoit*.

¹³ L., *apparu*.

¹⁴ T., 25,184, and Harl. *qe*; 16,560, *et*, instead *et lessone*.

¹⁵ *fuit* is not in L.

¹⁶ The words *quant al autre* are omitted from L.

¹⁷ *fuit* is omitted from all the MSS. but T.

¹⁸ The words subsequent to *respit* are from 25,184 alone.

¹⁹ T., B.; L., B.; Harl., *Beechelewyn*.

²⁰ 16,560, 25,184, and Harl., *survient*, instead of *sur nynt*.

²¹ T., B.

No. 18.

A.D. 1841-2. taxed by the Court And no enquiry was made as to collusion, and yet it may be a freehold.

Note as to Account. Process on writ of Account for one who was outlawed on the same writ. And note well, in this plea, as to the record which shall be sent to Justices of Nisi Prius.

(18.) § Note that H. de Rauseby was outlawed on a writ of Account, and afterwards had a charter of pardon, and sued garnishment against the plaintiff, who came and counted that H. was his receiver.—And the other side said the contrary.—And H. found surety to abide the inquest.—Afterwards process was continued against the jurors until a *Nisi prius* was granted before KELSHULLE. On the day given H. appeared by attorney, and the inquest being called was remitted for default of jurors, and they have a day now in the Bench.—*Thorpe* rehearsed the process, and prayed that, since H. did not come before KELSHULLE in the country, except by attorney, and in this case an attorney did not lie because H. was not on mainprise, this might be turned into a default, and *Thorpe* prayed the inquest on the default of H. and a writ to take him and his mainpernors.—*Pole*. That can not be; for no default has been recorded against him yet, and he

No. 18.

et damages taxes par Court].¹ *Et non inquiritur de collusione*,² *et tamen potest esse liberum tenementum*.³ A.D. 1341-2.

(18.) ⁴§ *Nota* qe H. de Rauseby fuit utlage eu bref dacompte, et puis avoit chartre de pardoun, et suit garnisement vers le pleintif, qe⁶ vynt et counta [qe H. fuit soun resceyvour.—*Et alii e contra*.—Et H.]¹ trova soerte⁷ dattendre⁸ lenqueste.—Puis proces continue vers les Jurrours tange *Nisi prius* fuit graunte devant KELS.;⁹ a quel jour H. apparust par attourne, et lenqueste demande remist par defaute des jurrours, et ount jour ore eu Baunk.—*Thorpe* rehercea le proces, et pria, del houre qe H. ne vynt pas devant KELS. en pais, forsque par attourne, en quele cas attourne ne gist pas pur ceo qil fuit par maynprise, et pria qe ceo fuit tourne en une defaute, et pria lenqueste par sa defaute et bref de prendre luy et ces meynpernours.—*Pole*. Ceo ne poet estre; qar nule defaute¹⁰ fuit recorde sur lui unquore, et il est ore cy

Nota de Compoto.
Proces en bref dacompte pur un qe par mesme le bref fut utlage *Et nota bene in isto placito de recorde qe serra mande as Justices de Nisi Prius.*⁵

¹ The words between brackets are not in 25,184.

² 25,184, saunz enquire de la collusion, instead of *non inquiritur de collusione*.

³ There is a record of a very similar, if not the same, case in the *Placita de Banco*, Hilary, 16 Edw. III., Ro. 116 d. The Abbot of Saint Evroul (de Sancto Ebrulpho) brought an action against the Abbot of Alencestre (Alcester) "quod reddat ei quinquaginta et quatuor solidos qui ei a retro sunt de annuo redditu triginta et sex solidorum quem ei debet, &c."—A deed was produced. The Abbot of Alcester could not deny the deed, but said there was nothing in arrears, and on this last point issue was joined. "Ideo consideratum

"est quod idem Abbas de Sancto Ebrulpho recuperet versus eum prædictum annuum redditum." There follows an award of *Venire*, presumably, though it is not so stated, as to arrears, judgment having been given only as to the annuity itself.

⁴ From T., 16,560, 25,184, and Harl., the case being omitted from L.

⁵ The whole of the marginal note subsequent to the word *Nota* is from 25,184 alone. In Harl. the marginal note is only *Acompte*.

⁶ 25,184, et.

⁷ T., maynprise.

⁸ T., datteyndre.

⁹ Harl., HILL.

¹⁰ Harl., faicte.

No. 18.

A.D.
1341-2.

is now here in his own person.—*Thorpe*. At any rate the Justices record that he did not come in his own person before them in the country; so that what was wanting there shall not be perfected here.—*HILLARY*. A Justice ought to record defaults and non-suits, and also the defaults of jurors of the inquest; and we do not know by his record whether he allowed or disallowed the warrant [of attorney]; and if the inquest had been there, how would he have taken the inquest?—*Thorpe*. Certainly by default, and for the profit of the King; and we pray the *Capias*.—*HILLARY* looked at the record which was sent to *KELSHULLE* in the country; and then the record did not mention whether *H.* was by mainprise or not. And then *HILLARY* said that *KELSHULLE* had not a full record before him in the country, and so he could not have done or recorded anything; and even if he had done so we should hold it as null.—*Thorpe*. A Justice at *Nisi prius* ought not to have all the record or the process; for if the parole had demurred without day, by protection or by excommunication, and afterwards there had been a resummons, there would certainly have been sent before him only the gross of the plea, and the issue would have been sent to him without the pleadings and that is sufficient.—*HILLARY*. Certainly that process would be sent before him, viz., whether *H.* was by mainprise or not; and this was wanting to him, and and therefore he had not the record; and therefore we take no account of what was done there; but since *H.* is here in his own person, and we have not an

No. 18.

en propre persone.—*Thorpe*. A meyns les Justices recordent¹ qil ne vynt pas en propre persone en pais devant luy;² issint qe ceo qe failli la ne³ serra pas parfait⁴ icy.—*HILL*. Justice deit recorder defautes et nounsuytes, et auxi defautes des jurours del enqueste; et nous ne savoms pas par soun record le quel il allowa⁵ ou desallowa⁶ le garrant; et si lenqueste ust este la, coment eust il⁷ pris lenqueste?—*Thorpe*. Certes par defaute, et pur le profit le Roi; et nous prioms le *Capias*.—*HILL*. regarda le record, qe fuit maunde a *KELS.* en pais; et donques ne fist pas le record mencion si H. fuit par maynprise ou noun. Et donques *HILL.* dit qe *KELS.* navoit pas pleyn record devant lui en pais, issi ne puit il rien aver fait ne recorde;⁸ et tut ust il fait nous le⁹ tendroms pur nynt.¹⁰—*Thorpe*. Justice a *Nisi prius* ne deit pas aver tut le record ne le proces; qar si la parole ust demore¹¹ saunz jour, par proteccion¹² ou par escomengement, et puis resomons, ja¹³ ne serroit¹⁴ il maunde devant¹⁵ lui mes¹⁶ le gros du plee, et lissue luy serroit maunde¹⁷ saunz plees, et ceo suffit.—*HILL*. Certes cele proces serroit maunde devant¹⁸ luy, le quel il fuyt par maynprise ou noun; et ceo luy faillit, par quei il navoit pas recorde; par quei ceo qe fuit fait illoeques nous le¹⁸ chargeoms pas; mes de puis qe H. est ycy en propre persone, et nous navoms pas enqueste, nous

A.D.
1341-2.¹ Harl., acorde.² T., &c., instead of devant luy.³ ne is omitted from 25,184 and Harl.⁴ T. and 16,560, pas fait; 25,184, par fait; Harl., profit, instead of pas parfait.⁵ 16,560, avowa.⁶ 16,560, desavowa.⁷ T., duist il aver, instead of eust il.⁸ T., regarde.⁹ le is from 25,184 alone.¹⁰ Harl., ne lentendoms pas nient, instead of le tendroms pur nynt.¹¹ 25,184, demurre.¹² Harl., processe.¹³ ja is not in 16,560.¹⁴ 25,184, serra.¹⁵ T., avant.¹⁶ T., ne.¹⁷ 16,560 mande avaut luy.¹⁸ 25,184, ne.

No. 19.

A.D. 1341-2. inquest, we shall respite the jury.—And so H. has a day by the first mainprise.

Wardship of the body. And note that it was the opinion of the whole Court that judgment should be given on the verdict (as was done) unless the plaintiff would aver that the defendant had since married the infant.

(19.) § Note that the inquest which heretofore, in Easter term, in the fifteenth year, was joined between the Earl of Lancaster and Robert de Lile, knight, on a writ of Wardship of the body, passed for the Earl against Robert at *Nisi prius*, and the value of the marriage and the damages were assessed, but whether the infant was married or not the jury could not say, because he lived in another county.—And now they have a day in the Bench.—And *Pole*, for the Earl, said that the infant was married, and he prayed his judgment.—*Thorpe*. You can not proceed to judgment until it be enquired whether the infant be married or not, for that matter will change your judgment; for in case the infant be married the plaintiff will recover the value of the marriage for the wardship, and damages, and if he be not married the plaintiff will recover the wardship and damages and not the value [of the marriage].—*Pole*. Where should this be enquired of?—*Thorpe*. Wheresoever you will say that he was married; and it is not reasonable that you should be believed on your own statement, and particularly when this involves damages and mischief to another; for if it be that judgment can be given on your testimony, perchance the reverse of your statement is the truth, and then you will recover the value of the marriage, whereas in fact you will have the marriage itself; for we can not have either the marriage or the forfeiture of him whose wardship we shall have lost, and the law does not purport that

No. 19.

mettroms la jure en respit.—*Et sic habet H.*¹ *diem* par A.D.
le primer maynprise. 1341-2.

(19.)² § *Nota* qe lenqueste qaltrefoitz, *termino Paschæ*, anno xv.,⁴ fuit joint entre le Counte de Lancastre et Robert de Lile,⁵ chivaler, sur bref de Garde de corps, passa pur le Counte coudre Robert par *Nisi prius*, et la value du mariage et damages furent taxes, mes si lenfant fuit marie ou noun ceo ne savoient ils dire, par ceo qil demora en altre counte.—Et ore ount jour en Baunk.—Et *Pole*, pur le Counte, dit qe lenfant est marie, et pria soun jugement.—*Thorpe*. Vous ne poez aler a jugement tanqe soit enquis si lenfaunt soit marie ou noun, qar cele matere chaungera vostre jugement; qar en cas qe lenfaunt soit marie le pleyntif recoveria la value del mariage pur la garde, et damages, et sil ne soit pas marie il recoveria la garde et damages et noun pas la value.—*Pole*. Ou le dust homme enquerre?—*Thorpe*. La ou vous voillez dire qil est marie; et il nest pas resoun qe vous soiez cru de vostre dit, et nomement la ou ceo cheit en damages et meschief daltri; qar sil soit issint qe homme rende le jugement sur vostre tesmoignance, par cas le revers de vostre dit est verite, et donques recoverez la value del mariage, la ou vous avez mesme le mariage; qar nous ne poms pas avoir ne⁶ mariage ne forfeiture de cely qi garde nous averoms⁷ perdu, et ley ne voet pas qe nous soioms charge de

Garde du corps. *Et nota* qe entent fut de tote La Court qe sur le verdit le jugement se fra, auxi com fuit fait, si ne fuit qe le pleyntif voleit averer qe de puisne temps il avoit marie lenfant, &c.³ [Fitz. Garde, 107.]

¹ H. is not in T.

² From T., 16,560, 25,184, and Harl., the case being omitted from L.

³ Except the words Garde du corps, the whole of the marginal note is from 25,184 alone. In T. the note is only Garde, in 16,560 *Nota* de garde.

⁴ T. and 25,184, *Termino Hil-*

larii, anno xiiij.; Harl., anno xij. *termino Michaelis*; 16,560, *alio termino*, instead of *termino Paschæ* anno xv. See Y.B., Easter, 15 Edw. III., No. 37.

⁵ T., del Idle; 16,560, de Lille; Harl., del Ile, instead of de Lile.

⁶ ne is from T. alone.

⁷ T., 25,184, and Harl., avoms.

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1341-2.

we are to be charged with the value of the marriage if we have not had the marriage.—*Pole*. Even if it be so, that is your own fault, for you have pleaded as a deforceant; but if at first, when the writ was brought against you, you had produced the infant ready to yield him up as unmarried, then issue might have been taken between us as to whether he was married or not, but not now; and this you might have seen at York between the Lord of Mowbray and John de Haveryngtone,¹ where the jurors did not know whether the infant was married or not, and on the testimony of the plaintiff that the infant was married the plaintiff recovered damages.—But the contrary was the fact.—*Thorpe*. It is found that the infant is only 10 years old, so that you can marry him; and by tender of a marriage and a refusal you can have the forfeiture; wherefore no law enables you to recover the value on your testimony.—HILLARY. You would have it that wherever the plaintiff would testify that the ward was married, there the matter should be tried by an Inquest of Office; and suppose he was married in France, how should that be tried?—To this no answer was given.—And note that in this plea was touched the point that in the case of wardship of the body, where the defendant is warranted, the recovery of the plaintiff shall be against the vouchee.—HILLARY. Certainly it shall not be so, but it shall be against the defendant, and he shall recover over to the value.—And this he said without making any distinction, whether damages are to be recovered in lieu of wardship or the wardship itself when the infant is not married.—*Quære*.—And also the point was touched that in detinue of a writing, if the writing has been delivered on condition, al-

¹ This may be a reference to the case reported in Y.B., Mich., 9 Edw. III., No. 43 (ff. 37, 38).

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value del mariage si nous ne ussoms eu le mariage.—*Pole.* Tut soit il issi, cest vostre defaute demene, qar vous avez plede come deforceour; mes si vous usses a primes, quant le bref fuit porte vers vous, mene lenfant prest a rendre come desmarie, la purreit issue aver este pris entre nous le quel il fuit marie ou noun, mes ore nynt; et ceo puisses aver vieu a Everwike entre le seignur de Moubray et Johan de Haveryngtone, ou ceux de lenqueste ne savoint cy lenfant fuit marie ou noun, et sour¹ la tesmoignance le pleintif. qe² lenfant fuit marie il recoveri damages.—*Sed fuit e contra.*—*Thorpe.* Il est trove qe lenfant est forsqe de x. aunz, issi qe vous le poez marier; et par tendre de mariage et refuser forfaiture aver;³ par quei nule ley ne vous doune de⁴ recoverir la value par vostre tesmoignance.—*HILL.* Vous voudriez qe la ou le pleyntif voleit tesmoigner qil fuit marie, qe⁵ illoeqes ceo serroit trie par enqueste doffice; et jeo pose qil fuit marie en Fraunce, coment serroit ceo trie?—*Ad quod non est responsum.*—*Et nota* qen ceo plee est touche qen cas de garde de corps, ou le defendant est garranti, qe le recoverir⁶ le pleyntif serra⁷ vers le vouché.—*HILL.* Certes noun serra, mes vers le defendant, et il outre a la value.—*Et hoc dixit indifferenter* le quel damages soient⁸ a recoverir en lieu de garde ou la garde⁹ quant lenfaunt nest pas marie.—*Quære.*¹⁰—Et auxi en detenue descript fuit touche qe si ele fuit livere sur

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1341-2.

¹ T. and 25,184, pur.

² 25,184, quant.

³ 25,184, naves pas.

⁴ Harl., le.

⁵ The words marie qe are omitted from 16,560 and 25,184.

⁶ 25,184, in a later hand, judgement.

⁷ Harl., serroit.

⁸ T. and 25,184, damage soit, instead of damages soient.

⁹ The words ou la garde are not in 16,560.

¹⁰ *Quære* is omitted from 25,184 and Harl.

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1341-2.

though the inquest passed against the defendant, the Court would not deliver the writing to the plaintiff until it was enquired in which of the parties to the condition there was default; for without enquiry as to that the Court can not deliver it.—*Quære*.—And afterwards it was adjudged that the plaintiff should recover the wardship and his damages. And they took for the ground of their judgment that the defendant said that the infant was not married, and the plaintiff did not say the reverse, &c.

Voucher.
If the heir
of a hus-
band vouch
in another
county.
Dower,
where the
heir of the
deman-
dant's
husband
was vouch-
ed, and
entered
into war-
ranty, and
rendered
dower as
one who
had no-
thing, and
tendered
the aver-
ment that
this was so.
And, be-
cause all

(20.) § The tenant vouched Alice and Margaret as daughters and heirs of Thomas, Earl of Norfolk, husband of the demandant, to be summoned with their husbands in the county of Norfolk. And they came by the *Cape*, and asked by what, &c.—And the tenant shewed a feoffment made by their father to her, with warranty, for the term of her life, and a confirmation of the King.—And they said that they had an action by the form of an entail, and, saving to them their action, they warranted and rendered to the demandant as those who had nothing by descent in fee simple.—*Rokell*. You have assets by descent in fee simple in Norfolk and Suffolk.—*Thorpe*. Now we pray judgment for the demandant, and let him (*Rokell*) sue for his value.—*HILLARY*. That is reasonable.—*Rokell*, seeing that the lady would have her judgment immediately, said that the vouches had assets in Norfolk by descent in fee simple.—*BASSET*. Therefore the COURT adjudges

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condicion, qe tut passa lenqueste countre le defend-
aunt, qe Court ne livra pas al pleintif lescript tange
fuit enquis en¹ qi de eux qe fuit partie a la condi-
cion defaute il avoit; qar saunz ceo enquere Court nel
poet liverer.—*Quere*.—Et puis fuit agarde qe le
pleintif recoverast la garde et ses damages. Et pris-
trent pur cause de jugement pur ceo qe le defendaunt
dit qe lenfaunt nest pas marie, et le pleintif ne dit
pas le revers, &c.

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Juge-
ment.²

(20.)³ § Le tenant voucha Alice et Margarate come
filles et heirs Thomas, Counte de Norfolk,⁴ baroun la
demandante, qe serrount somons ove lour barouns en le
counte de Norfolk, qe vyndrent par le *Cape*, et deman-
derent par quei, &c.—Et le tenant moustra feffement
lour pere fait a luy, ove garrantie, a terme de sa vie et
confirmement du Roi.—Et ils disoient qils avoient accion
par fourme taille, et, save a eux lour accion, il garran-
tirent et rendirent a la demandante come ceux qe riens
nount par descente en fee simple.—*Rokel*. Vous avez
assez par descente en fee simple en Norfolk et Suffolk.
—*Thorpe*. Ore prioms jugement pur la demandante,
et sue⁷ il pur sa value. — HILL. Cest resoun.⁸—
Rokel, veaunt qe la Dame averoit⁹ meyntenant soun
jugement, disoit¹⁰ qils avoient assez en Norfolk par
descente en fee simple.—BASSET. Par quei agarde la

Vowcher.⁴

Si heir
de baron
vouche
en altre
conte⁵

Dowere,
ou leir le
baron la
deman-
dante fut
vouche, et
entra, et
rendi dou-
were come
celi qe
rieniz [na-
voit], et
le tendi
daverer qe
si. Et, pur
ceo que tut

¹ T., 16,560, and 25,184, a.

² The word judgement in the mar-
gin is from 25,184 alone.

³ From T., 16,560, 25,184, and
Harl. (the case being omitted from
L.), but corrected by the record,
Placita de Banco, Hilary, 16 Edw.
III., R^o. 167. It there appears that
the action of Dower was brought
by "Maria," late wife of Thomas,
late Earl of Norfolk, and Marshal
of England, against Joan, wife of

Robert de Morle, knight, who was
admitted to defend her right on her
husband's default.

⁴ Voucher only is the marginal
note in T. and 16,560.

⁵ This is the marginal note in
Harl.

⁶ T., Northampton.

⁷ 16,560, sui.

⁸ T. and 25,184, verite.

⁹ Harl., avoit.

¹⁰ 16,560 and Harl., et dit.

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was in one
and the
same
county,
conditional
judgment
was given
at once.

that the demandant do recover against the vouchees, if they have anything by descent in fee simple, and if they have not, then against the tenant, and he to the value when, &c., and that the vouchees be in mercy.—*Rokell*. They are under age and render without counterplea.—*Thorpe*. Their husbands are of full age, and come by the *Cape*, and they hold by barony, wherefore, for the King, we pray that they be amerced with their husbands.—*HILLARY*. Judgment must be given that they be amerced, but we will see whether there be matter on account of which we can pardon the amercement; and the husbands are of full age, and can not be severed from their wives in the amercement.—*Pole*. For that reason the whole shall be pardoned, for an infant under age shall not be amerced, and the husbands are parties only by reason of coverture; and in an assise of Mort d'Ancestor, if it were brought by them in right of their wives, no surety would be found.—And, notwithstanding, the amercement stood unpardoned, &c.

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COURT qe la demandante recovere vers les vouches, sils eient par descende en² fee simple, et si noun, vers le tenant, et il a la value quant, &c., et les vouches en la mercy.—*Rokel*. Eles³ sount deinz age et rendent saunz countreplee.—*Thorpe*. Les barouns sount de pleyn age, et venent⁴ par le *Cape*, et ils tenent⁵ par baronie, par quei, pur le Roi, nous prioms qeles⁶ soient amercies [ove lour barouns.—*HILL*. Il covynt qe lagarde se face qils soient amercies],⁷ mes nous verroms sil y eit matere qe nous perdoneroms⁸ lamerceiement; et les barouns sount⁹ de pleyn age, et ne pount estre severes de lour femmes en lamerceiement.—*Pole*. Pur ceo tut serra perdone, qar enfaunt deinz age ne serra pas amercie, et les barouns ne sount pas parties¹⁰ forsque par resoun de couverture; et en assise de Mortdancestre, sil fuit porte¹¹ par eux de dreit les femmes, nule surte serroit trove.—Et, *non obstante*, lamerceiement esta¹² nynt perdone, &c.¹³

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fut [en]
un mesme
counte,
jugement
condi-
cionel fut
rendu
meine-
tenant,
&c.¹
[Fitz.
Amerce-
ment, 14.]

¹ This is the marginal note in 25,184.

² T., de.

³ Harl., els; 25,184, eux.

⁴ T., veignent.

⁵ T., teignent.

⁶ T., qil.

⁷ The words between brackets are omitted from 16,560.

⁸ MSS. of Y.B., perdroms.

⁹ Harl., soient.

¹⁰ 16,560, par tiels.

¹¹ Harl., partie.

¹² T., estut.

¹³ According to the record the dower demanded was of 5,000 acres of marsh in Halvergate (Norfolk). Joan vouches John de Segrave, knight, and Margaret, his wife, daughter, and one of the heirs of Thomas, late Earl of Norfolk, &c., and Edward de Monte Acuto, and Alice his wife, daughter, and the

other of the heirs, &c., in the same county, and in the counties of Suffolk, Essex, and Hertford. Each appears by the attorney of her husband, each having her own husband as guardian, "et petunt sibi ostendi " si quid specialitatis habeat per " quod ei warrantizare debeant, " etc.

" Et Johanna dicit quod prædictus Comes per scriptum suum " indentatum dedit et concessit " mariscum prædictum unde &c., " prædictis Roberto et Johanne " habendum et tenendum eisdem " Roberto et Johanne ad totam " vitam ipsius Johanne, et obligavit se et heredes suos ad warrantiam, etc.; et profert hic in Curia " prædictum scriptum quod hoc " idem testatur.

" Et Johannes, Margareta, Edwardus, et Alicia dicunt quod

Nos. 21-23.

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1341-2.
Note. (21.) § Note that the persons who received an estate by fine levied on render were not admitted to charge the land to the person who rendered with a certain rent, because they were not seised. Witness the case of Thomas Hoe and Isabel his wife, who took estate.

Detinue of
writing. (22.) § Note that, on a writ of Detinue of two writings, the plaintiff admitted that he had received one of the writings, and as to the other, the defendant admitted the detinue, and gave the writing up; wherefore, as to that writing, the plaintiff recovered the writing and his damages assessed by the Court, and as to the other he was in mercy, because he had received the writing out of Court.

Fine,
where re-
version
must be
saved to
the person
rendering. (23.) § Note that Ralph de Neville acknowledged the manor, &c., to be the right of Eva the wife of Robert Benalle, as that which Eva had of his gift; and for that acknowledgment Robert and Eva rendered the

<p>" prædictus mariscus unde, &c., " simul cum castris, honoribus, " maueris, et aliis tenementis, quæ " quondam fuerunt Rogeri Bygot, " quondam Comitis Norfolciæ, fuit " in seisinâ domini Edwardi Re- " gis patris domini Regis nunc, " qui mariscum illum, una cum " castris, honoribus, maneriis, et " tenementis prædictis, per cartam " suam, dedit et concessit præ- " dicto Thomæ nuper Comiti, &c., " habendum et tenendum sibi et " heredibus suis de corpore suo " procreatis Et, salva sibi actione " sua in hac parte, &c., tanquam " heredes sanguine prædicti Tho- " mæ Comitis, &c., nihil habentes " per descensum hereditarium in " feodo simplici de prædicto Co- " mite patre suo, eidem Johannæ " de tali statu in prædicto scripto " contento warrantizant &c., et red-</p>	<p>" dunt prædictæ Mariæ prædictam " dotem suam. " Et, quia attornatus prædictæ " Johannæ testatur quod prædictæ " heredes habent terras et tene- " menta ad sufficientiam, in præ- " dicto Comitatu Norfolciæ, quæ eis " descenderunt per descensum he- " reditarium in feodo simplici de " prædicto Comite patre suo, gratis " relinquendo beneficium quod ei " competere posset per vocare " suum prædictum in aliis præ- " dictis comitatibus, &c., in qui- " bus, &c., consideratum est quod " si prædicti Johannes, Margareta, " Edwardus, et Alicia satis habeant, " &c., ut de jure ipsarum Marga- " retæ et Aliciæ, de libero tene- " mento quod fuit prædicti Co- " mitis quondam viri, &c., quod " eis descendit per descensum he- " reditarium de prædicto patre</p>
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Nos. 21-23.

(21.)¹ § *Nota* qe ceux qe receustrent² estat par fyne leve sur rendre ne furent pas resceux de charger la terre a celui qe rendi en certeyne rente, pur ceo qils ne furent pas seisis. *Teste* Thomas Hoe et Isabele sa femme, qe pristrent estat.³

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1341-2.
Nota.

(22.)⁴ § *Nota* qen detenue de deux escriptez le pleyntif conust qil avoit resceu⁵ lun escript,⁶ et quant al autre, le defendant conust la detenue et le⁷ rendi; par quei en dreit de cel escript le pleyntif recoveri lescript⁸ et ces damages taxes par Court, et quant al altre il fuit en la mercy, pur ceo qil le⁹ resceut¹⁰ hors de Court.

Detenue
descripte.
[Fitz.
Detenue,
47.]

(23.)⁴ § *Nota* qe Rauf¹² de Neville conust le manere, &c., estre le dreit Eve la femme Robert Benalle,¹³ come ceo qe Eve avoit de soun doun; et pur cele reconisance Robert¹² et Eve¹⁴ renderent le manere a Rauf¹² a la

Finis, ou
reversion
covient es-
tre salve
a cely qe
rendi.¹¹
[Fitz.
Fynes, 3.]

" suo in feodo simplici, unde eidem
" Mariæ facere possunt ad valen-
" tiam, &c., tunc prædicta Jo-
" hanna teneat in pace, et præ-
" dicta Maria habeat de terra
" prædictarum heredum quæ eis
" descendit per descensum heredi-
" tarium ad valentiam, &c., et, si
" quid ei inde defuerit, id habeat
" de prædicta tertia parte versus
" prædictam Johannam petita, &c.,
" et eadem Johanna habeat de terra
" prædictarum heredum ad valen-
" tiam, de eo quod sic defuerit, cum
" eis acciderit per descensum here-
" ditarium in forma prædicta. Et
" idem Johannes, Margareta, Ed-
" wardus, et Alicia in misericor-
" dia."

¹ From T., L., 16,560, 25,184,
and Harl.

² 16,560, resceustrent; Harl., re-
current.

³ The last sentence is omitted
from L.

⁴ From the five MSS., as above.

⁵ L. and Harl., ressu.

⁶ escript is not in L.

⁷ L., luy.

⁸ lescript is not in 16,560.

⁹ le is from 16,560 alone.

¹⁰ T., reust; 16,560, resceit; L.,
ressut.

¹¹ The words subsequent to *Finis*,
in the marginal note, are from
25,184 alone. In Harl. the note
is only *Nota*.

¹² L., R.

¹³ L., de B.

¹⁴ L., E.

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A.D.
1341-2.

manor to Ralph for the life of Hawise Claveryng, so that after the death of Hawise the manor should return to Eva and her heirs.—HILARY. The reversion must be saved to those who render.—And then the reversion was saved to Robert and Eva, after the life of Hawise, and to the heirs of Eva.

Assise of
Nuisance,
the nuisance
being assigned
on the ground
of a trench
cut into the
water, and by
verdict the
nuisance was
found to be of
a different
kind, that is
to say the
breaking down
of a weir.
And for that
reason the writ
was abated
by judgment,
and

(24.) § Assise of Nuisance in Tetcot to the nuisance of the plaintiff's freehold in Luffincot. And the plaint was that whereas the plaintiff had his water-mill in Luffincot, which used to grind by the wheel eight quarters of all kinds of corn by day and night, from which mill the water of B. used to hold its course directly through the vill of Luffincot, as far as Tetcot, the defendant had cut a trench into the said water in Luffincot, by which the course of the water had been diverted and ran below his mill, so that he could grind nothing.—The defendant pleaded by bailiff that the place put in view in which the nuisance was

No. 24.

vie Hawyse Claveryng,¹ et apres le decees Hawyse
 qe le manere retournereyt a Eve et ces heirs.—HILL. A.D.
 Il covynt salver la reversion a ceux qe rendent.—Et 1341-2.
 puis la reversion fuit salve a Robert² et Eve,³ pus⁴
 la vie Hawyse,⁵ et les heirs Eve.⁶

(24.)⁷ § Assise de¹⁰ Nusaunce¹¹ en Tetecote¹² Assise de⁸
 nusaunt¹³ a soun frauntenement en Luffyngcote.¹⁴ Et¹⁵ nusaunce,⁹
 la pleynte fuit¹⁶ par la ou il avoit son molyn eweret assigne par
 en Luffyngcote,¹⁷ qe soleyt moudre par jour et nuyt¹⁸ cause dun
 viii.¹⁹ quarters de totes²⁰ maneres²¹ des blees a la roe,²² fait en
 de quel molyn lewe de B.²³ soleit tener adressement²⁴ leau, et par
 soun cours²⁵ par my la ville de Luffyngcote¹⁷ tanqe verdit la
 a Tetecote²⁶ par²⁷ la avoit il fait une trenche en nussaunce
 la dite ewe en²⁸ L.²⁹ par quei le cours del ewe fuit trove altre,
 bestourne³⁰ et corust³¹ par avale³² soun molyn, issi qil saver par
 pout rien moudre.—Le defendant pleda par bailiff qe debruser
 le lieu mys en viewe en quel la nusaunce fuit³³ assigne abatu par
 agarde, et

¹ L., de C.² T. and L., R.³ T. and L., E.⁴ T., pur.⁵ T., H.; L., and Harl., Eve.⁶ T., E.⁷ From the five MSS., as above.⁸ The words Assise de are from T. and L. only.⁹ L. and Harl., anusaunce.¹⁰ The words Assise de are from L. alone.¹¹ L., anusaunce.¹² All the MSS. except L., D. or Depecote.¹³ L., anuant.¹⁴ L., Lufwyncote; T. and Harl., Loffyngcote.¹⁵ Et is from L. alone.¹⁶ fuit is from L. alone.¹⁷ T. and L., L.¹⁸ L., nuct; Harl., nocte.¹⁹ Harl., eyt.²⁰ L., chesqun.²¹ L., manere.²² L., rote; 16,560 and Harl., roo.²³ L., H.²⁴ 16,560, arestement.²⁵ Harl., corps. For the words tener adressement soun cours there are substituted in L. the words courrer adrossement, et prendre son cours.²⁶ All the MSS. except L., D. or Depecote.²⁷ par is not in T.²⁸ T. and 25,184, de.²⁹ 25,184, D.³⁰ L. and Harl., destourbe.³¹ 16,560, tourniet.³² Harl., en cost, instead of par avale.³³ 25,184, est.

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that even
notwith-
standing
the fact
that the
tenant did
not plead
this.

assigned was in Luffincot and Tetcot.—It was found by verdict that, whereas there was a weir across the water, which was made of turves and piles, by reason of which the water ran to the mill, and the water was a division and boundary between the vills of Luffincot and Tetcot as far as the place where the weir was fixed, the defendants with picks tore up the weir fixed in their soil in Tetcot, by which means the water was diverted, and afterwards by a rising of the water and flood the remainder of the weir which was in Luffincot was carried away by the water.—And they were adjourned into the Bench, where exception was taken to the plaint, for that the plaint purported that a trench was made, by means of which the water was diverted, and it was found by the Assise that the nuisance was in breaking down a weir, which is a different nuisance from that assigned by the plaint. Besides, the writ is false according to the verdict of the Assise, the writ supposing the nuisance to be in one vill only, whereas it is found to be in the two vills; for, although the handywork was only in one vill, and the remainder of the weir which was carried away by the water is in the other vill, all arises from his act; and the plaintiff would recover damages for the destruction of the whole weir by a writ of Trespass, and so also in assise, all the weir would have to be repaired at the costs of him who destroyed a part of it.—And, notwithstanding, as to that point the Court held the writ to be good. Nevertheless *Quære*.—But because the nuisance was found to be other than that which the

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fuit en Luffyngcote² et Tetcote.³—Trove fuit par verdit⁴ que par⁵ la ou il avoit une gorge a travers del ewe, qe le fuit fait de⁶ tourbes et piles, parount lewe corust au molyn, et qe lewe fuit devyse et bounde entre les villes de L. et T.⁶ [tanqe al lieu ou le gorge fuit fiche, et qe les defendantz par pykoys⁷ araserent le gorge tache⁸ en lour soille en T.]⁹ par quei lewe fuit¹⁰ bestourne, et puis par creteyn et deluvye¹¹ le remenant de gorge qest en L.¹² fuit emporte¹³ par lewe.—Et furent ajournes en Baunk, ou la pleynte fuit challenge de ceo qe la pleynte voleit qe trenche fuit fait par ount lewe fuit bestourne, et par Assise fuit trove la nusaunce en le¹⁴ debrisser¹⁵ dune gorge, quel¹⁶ est altre nusaunce qe nest assigne par pleynte. Ovesqe ceo, le bref est faux, par verdit dassise,¹⁷ qe suppose la nusaunce en une ville soulement, ou trove est en les deux villes; qar tut fuit le mainovere¹⁸ fait soulement en lune ville, et le remenant emporte par lewe qest en lautre ville, tut sourd de soun fait; et de tut le gors abatu le pleintiff recovereit damages par bref de trespas, et auxi en assise, tut le gors serroit reparaille as coustages celui qe abatist parcella.—*Et non obstunte*, quant a cele point la COURT tynt le bref bon.—*Quære tamen*.—Mes pur ceo qe la nusaunce est trove altre qe la

A.D.
1341-2.
uncore non
ostante qe
le tenant
ne pleda
mye cella,
&c.¹
[16 Li.
Ass., 3;
Fitz.
Nusauns,
11.]

¹ The words subsequent to Assise, de nusaunce are from 25,184 alone.

² T. and L., L.

³ All the MSS. except L., D. or Depecote.

⁴ par is not in 16,560.

⁵ L., par.

⁶ Harl., de E.; the other MSS., except L., D. or Depecote.

⁷ T., pileis; Harl., parcois.

⁸ Harl., stache.

⁹ The words between brackets are not in Harl.

¹⁰ fuit is not in L.

¹¹ T. and Harl., delivye; L., par di luve.

¹² The words qest en L. are omitted from L., 16,560, and Harl.

¹³ 16,560, corrupte.

¹⁴ L., par, instead of en le.

¹⁵ 16,560 and Harl., debrusure; 25,184, debraser.

¹⁶ T. and L., le quel.

¹⁷ 16,560, lassise, instead of verdit dassise.

¹⁸ T., meynoepre; 16,560, memorie.

No. 25.

A.D. 1341-2. plaint purported the writ abated by judgment, because the plaint ought to be according to the fact, &c.

Annuity.
And observe well
in this case
the manner
of defence,
that is to
say, by
denying
in full.

(25.) § The Prior of Bermondsey brought a writ of Annuity against the parson of Fivehead, and counted of a seisin from time whereof memory runs not.—*Gayneford* denied tort and force, and said that the Court ought not to take cognisance because the matter was one between persons of Holy Church, and because the demandant did not frame his count on a lay contract which would give jurisdiction, &c.—*Thorpe*. His exception is not to the person, and therefore he ought to defend as largely as we have counted; for his defence could not give jurisdiction to the Court; judgment against him as against a person undefended.—Wherefore *Gayneford* denied the damages, and all else, and demanded judgment as above.—*Thorpe*. In Assise and in *Quo Warranto* this would be a title.—And then he produced a deed of the patron and of the Ordinary, made in the time of King Henry the Second, on a dispute which there was at that time, about the patronage of the church, between the Prior, to whom the church was given to his own use, and another who claimed the advowson, so that, in order to appease the strife, the other by fine had the advowson, and the Prior and his

No. 25.

pleynte ne voet, le bref¹ abatist² par agarde,³ pur ceo A.D. 1341-2.
qe la pleynte serroit sur le fait, &c.

(25.)⁴ § Le Priour de Bermoundeseye porta bref Annuite. Et vide bene hic de manere de la defens, saver a defendre pleynement.⁵
dannuite vers la persone de Fifhide,⁶ et counta de seisine de temps⁷ dount memorie⁸ ne court.—*Gayn.* defendi tort et force, et dit qe Court ne deit conustre pur ceo qe cest⁹ entre gentz de Seint Eglise, et il ne lia¹⁰ pas soun count par lay¹¹ contract qe durreit¹² jurisdiction, &c.—*Thorpe.* Sa excepcion nest pas a la persone, par quei il duist defendre si largement come nous avoims counte; qar soun defens¹³ ne purroit doner jurisdiction a la Court; jugement de luy¹⁴ com de¹⁵ noun defendu.—Par quei *Gayn.* defendi les¹⁶ damages, et tot outre,¹⁷ et demanda jugement *ut supra*.—*Thorpe.* En Assise et en¹⁸ *Quo Warranto* ceo serroit title.—Et puis il mist avant fait de patron et de Ordiner, fait en temps le Roi H. le secunde, sur debat qil y¹⁹ avoit sur le patronage del eglise adonques entre le Priour, a qi leglise fuit done en propre²⁰ oeps,²¹ et un autre qe clama lavowesoun, issi qe, pur appeser²² lestrif,²³ lautre par fyne avoit lavowesoun, et le Priour et ses successors

¹ All the MSS. except 16,560, la pleynte, instead of le bref.

² The report ends here in 25,184 and Harl.

³ The report ends here in L. and 16,560.

⁴ From the five MSS. as above.

⁵ The words subsequent to Annuite are from 25,184 alone.

⁶ L., Fifhide; 16,560 and Harl., Frishide.

⁷ The words de temps are omitted from 16,560 and Harl.

⁸ 25,184, memoire.

⁹ T. and 25,184, ceo qest, instead of pur ceo qe cest.

¹⁰ L., ley; Harl., ly.

¹¹ T. and Harl., ley; 16,560, le. The word is omitted from L.

¹² L., dorreit.

¹³ defens is omitted from L.

¹⁴ L., ley.

¹⁵ de is omitted from 25,184 and Harl.

¹⁶ L., des.

¹⁷ The words et tot outre are from L. alone.

¹⁸ 25,184, accion in, instead of assise et en.

¹⁹ y is from T. alone.

²⁰ L., propres.

²¹ 25,184, eops.

²² T., abesser; 16,560, appeller; 25,184, apeser.

²³ L., lescript.

No. 26.

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1341-2.

successors had the pension by the hand of the parson.—*Gayneford*. The plea is discontinued, for the demand is for sixty shillings and ten shillings, as the record proves:—*talis obtulit se versus talem de placito quod reddat ei lx. et x. solidos qui ei a retro sunt de quodam annuo redditu*; and in all the process since the first continuance the ten shillings are omitted, so now we have not a day for this plea.—*Thorpe*. The Sheriff at first returned "He is a Clerk," so that the party afterwards until now had not a day in Court, but all the process was made against the Bishop to compel his clerk to come; and that which was first entered when the defendant did not come is not of the substance of the matter but a form of enrolment; for if the roll had been in the form *de placito cujusdam annui redditus* it would have been good enough until the party came.—BASSET. It would not be; for it is possible that divers pleas of Annuity were pending between them, and so by such an enrolment and process the party would not know to what he had to answer, before he came into Court, and that would be unreasonable.—*Gayneforde*. In a like case, during this present term, a process on a writ of Annuity, against a parson, was discontinued.—And this plea was discontinued in the same way.

Elegit.(26.) § Note that *William Thorpe*, upon a recognisance,

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avoient lenpensioun par la mayn le persone.—*Gayn.* A.D. 1341-2.
 Le plee est discontinue, qar la demande est de lx. et x.¹ s.,
 come le record prove :—*talis obtulit se² versus talem³*
de placito quod reddat ei lx. et x.⁴ solidos qui ei a
retro sunt de quodam annuo redditu; et en tut le
 proces puis la primere continuaunce les xs. sount entre-
 lesses, issint a ore navoms pas jour a ceo plee.—*Thorpe.*
 Le Vicounte retourna primes *quod clericus est,*⁵ issint
 qe la partie puis tanqe a ore navoit pas jour en Court,
 mes⁶ tut le proces se fist vers levesqe⁷ de faire venir
 soun clerc; et ceo qe primes fuit entre quant⁸ le
 defendant ne vynt pas⁹ nest pas de substaunce de
 matere mes fourme denroulement; qar, si le roule ust
 este *de placito cujusdam*¹⁰ *annui redditus*, il serroit
 assez bon¹¹ tanqe partie ust venuz.—*BASSET.* Noun
 serroit; qar puit estre qe divers pleges dannuite¹²
 fuissent¹³ pendaunz¹⁴ entre eux, et issi par tiel en-
 roulement¹⁵ et proces partie ne saverait a quei respondre,
 avant qil vendreit en Court, qe serroit encountre resoun.
 —*Gayn.* En autiel¹⁶ cas ore ceste terme fuit un proces
 discontinue en bref dannuite vers un persone.—*Et eodem*
modo fuit ceo plee discontinue.¹⁷

(26.)¹⁸ § *Nota* qe *William*¹⁹ *Thorpe*, hors dune reconi- *Elegit.*

¹ 25,184, lxx. instead of lx. et x.

² The words *obtulit se* are omitted from L.

³ L., un tiel.

⁴ T., lxx. instead of lx. et x.

⁵ est is not in 16,560.

⁶ L., ne.

⁷ L., le Ordiner.

⁸ Harl., avant qe.

⁹ pas is omitted from 16,560 and Harl.

¹⁰ *cujusdam* is from L. alone.

¹¹ bon is from L. alone.

¹² dannuite is not in 16,560.

¹³ L., furent.

¹⁴ Harl., pendance.

¹⁵ L., cel roulement, instead of tiel enroulement.

¹⁶ L., altiel; T., tiele.

¹⁷ The last seven words are from 25,184 alone.

¹⁸ From the five MSS. as above.

¹⁹ *William* occurs in Harl., but is altogether omitted from 16,560. The other MSS. give the initial *W.* only.

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1341-2.
Execution
upon
recogni-
sance. And
observe a
delay with-
out good
cause.

prayed an *Elegit* in respect of a moiety of all the lands which the obligor had on the day when he made the recognisance, or at any time since.—HILLARY. You shall have it only in respect of the lands which he had on the day of making the recognisance, by the first writ, and if the Sheriff testify that he had not any lands at that time, then you shall have your writ, and not before.—*Thorpe*. Then I shall be delayed without cause, and shall not recover damages; and if the Sheriff have not such a direction as I pray, he can not, without being a disseisor, deliver any other lands but those which were in the hand of the obligor on the day of making the recognisance, although the lands which were afterwards purchased be charged.—HILLARY. What of that? We will not and can not change the ancient usages; and I was in a similar case myself and could not have the writ [in the form in which you ask it].—And in this HILLARY erred, as I think.

Entry sur
disseisin.

(27.) § Entry brought on a disseisin effected on the demandant. The feoffment of the demandant's mother with warranty was pleaded in bar by an assignee, &c.—*Thorpe*. We tell you that the demandant was in the wardship of this same person, his mother, by reason of nurture, so that this feoffment,

No. 27.

sance, pria *Elegit* de moite des² totes les terres qe le reconisour³ avoit jour de la reconisance, ou unqes puis. —HILL. Vous naveres pas forsque des terres qil avoit jour de la reconisance, al primer bref, et si le Vicounte⁴ tesmoigne qil navoit nules terres adonqes, vous averez donqes vostre⁵ bref, et nynt devant.—*Thorpe*. Donqes serrai jeo delaie saunz cause, et ne recoveray pas damages; et le Vicounte,⁴ sil neit⁶ tiel⁷ maundement⁸ come jeo⁹ prie, ne puit liverer altres terres qe celes qe furent en la mayn le reconisour jour de la reconisance fait,¹⁰ tut soient les terres queles furent purchaces puis charges, sil ne soit disseisour.—HILL. De ceo quei? Nous ne voloms ne ne pooms chaunger¹¹ les auncienes usages; et jeo fui en tiel cas mesme et nel poai aver.—*Et in hoc erravit HILL., ut credo.*¹²

(27.)¹³ § Entre sur disseisine fait al demandant. Le feffement la mere le demandant¹⁴ ove garrantie fuit plede en barre par¹⁵ assigne, &c.—*Thorpe*.¹⁶ Nous vous dioms qe le demandant fuit en la garde mesme cele sa mere, par resoun de nurture, issint qe cel feffement, qe

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1341-2.
Execucion
hors de re-
conisance.
Et vide un
delay sanz
cause, &c.¹
[Fitz.,
Execucion,
47.]

Entre sur
disseisine.
[Fitz.,
Garraunte
20.]

¹ The marginal note in T. and L. is *Elegit* only; in Harl., *Execucion* only. The rest is from 25,184 alone.

² The words *moite des* are from Harl. alone, from which MS., however, are omitted the words *totes les*.

³ 25,184, qil, instead of qe le reconisour; T. and L., conisour, instead of reconisour.

⁴ 25,184 and Harl., Viscunte.

⁵ Harl., tele; L., donqes tiel, instead of donqes vostre.

⁶ Harl., voet.

⁷ Harl., al.

⁸ L., comandement.

⁹ Harl., il.

¹⁰ fait is omitted from 16,560 and Harl.

¹¹ Harl., chalanger.

¹² The last sentence is from Harl. alone.

¹³ From the five MSS. as above, but compared with the record, *Placita de Banco*, Hilary, 16 Edw. III., R^o 183, d. It there appears that the action was brought by Hugh de Chew against Roger Heved, in respect of two shops in Gloucester, into which Roger had not entry but by Walter Devenish, who demised them to Roger, and disseised Hugh.

¹⁴ L., sa mere, instead of la mere le demandant.

¹⁵ 16,560, et.

¹⁶ T., *Pole*.

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1341-2. which was made at a time when the demandant was under age, was a disseisin to us; judgment whether by such a deed he can bar us of an action.—*Pole*. We tell you that the demandant was a purchaser, in which case he would not be in wardship.—This was not allowed.—*Pole*. We tell you that his mother, whose deed, &c., had a fee in the land at the time of the feoffment; ready, &c.—*Thorpe*. You shall not be admitted to that without shewing how, since you do not deny that the demandant was seised at the time when he was under age, or that the feoffment was made during his nonage.—*Pole*. Then you refuse the averment?—*Thorpe* maintained that the mother had no estate in the land but by reason of nurture when she enfeofed; ready, &c.—And the other side said the contrary.

No. 27.

fuit fait a quele temps le demandant fuit dedeinz age, fuit une disseissine a nous ;¹ jugement si par tiel fait nous puisse² daccion barrer.—[*Pole*. Nous vous dioms qe le demandant fuit purchaceour, en quel cas il ne serroit pas en garde.—*Non allocatur.*]³—*Pole*. Nous vous dioms qe sa mere, qi fait, &c., al temps del feffement, avoit fee en la terre ;⁴ prest, &c.—*Thorpe*. A ceo ne serrez resceu saunz moustrer coment, del houre qe vous ne dedites pas qe le demandant⁵ fut seisi a temps qil⁶ fuit deinz age, et auxi qe le feffement se fist duraunt soun⁷ noun⁸ age.—*Pole*. Donques refusez vous⁹ laverement ?—*Thorpe* meyntient qe navoit forsqe par cause de nurture en la terre quant ele feffa ;¹⁰ prest, &c.—*Et alii e contra.*¹¹

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1341-2.

¹ The words a nous are from L. alone.

² 16,560, pussez ; Harl., puis ; L., put il.

³ The words between brackets are not in this place in 16,560, but (with the substitution of *Thorpe* for *Pole*) they are inserted after the words prest, &c., next below.

⁴ The words en la terre are omitted from T. and L.

⁵ Harl., tenant.

⁶ T., a cele temps ; 25,184, au tiel temps, instead of fut seisi a temps qil.

⁷ Harl., le.

⁸ noun is omitted from L.

⁹ vous is from L. alone.

¹⁰ L., enfeffa.

¹¹ According to the record the count was that the demandant was seised in his demesne, as of fee and right, taking the esplees.

Roger pleads that Isabella, late wife of Thomas de Chyw, "quondam Burgensis Gloucestrensis" "mater prædicti Hugonis, cujus" "heres ipse est, per chartam suam

"dedit, concessit, et carta illa" "confirmavit prædicto Waltero," "per nomen Walteri Deveney's" "cissoris," the said shops to hold to him and his heirs and assigns, and Walter, by "cartam indentatam," gave, granted, and confirmed the same to Roger Heved to hold to him and his heirs "unde" "dicit quod si ipse ab aliquo extraneo de eisdem shopis impletaretur prædictus Hugo, ut" "filius et heres prædictæ Isabellæ" "tenetur ei tanquam assignato" "prædicti Walteri tenementa illa" "warrantizare, unde petit iudicium si idem Hugo contra factum" "prædictæ Isabellæ matris suæ, &c." "actionem versus eum habere debet," &c. Profert was made of the two "chartæ."

"Et Hugo dicit quod ipse, virtute chartæ prædictæ Isabellæ matris suæ, ab actione sua præcludi non debet in hac parte, quia dicit quod prædictus Thomas de Chew quondam vir prædictæ Isabellæ pater ipsius Hugonis,

No. 28.

A.D.
1341-2.
Proclama-
tion on
Writ of
Wardship.

28. § Note that, on the Proclamation being testified on a writ of Wardship, the defendant did not come, wherefore it was adjudged that the plaintiff should recover the Wardship and not damages, because by Statute,¹ in the passage in which the Proclamation is given, no mention is made of damages. — And the plaintiff prayed a writ to the Sheriff of a county, other than that in which the original writ was brought, to distrain the defendant to deliver the body; and he did not have any writ except to the Sheriff of the county in which the original writ was directed; and should that Sheriff testify that the defendant has nothing, or that the infant is in another county, the plaintiff will then have a writ to another Sheriff.—And this happened at the end of this term.—And note (*per* HILARY), as to the Statute concerning wardships,¹ which purports

¹ 52 Hen. III. (Marlb.) c. 7.

No. 28.

(28.)¹ § *Nota* qe, a la proclamacion³ tesmoigne en bref de Garde, le defendant ne vynt pas, par quei⁴ fuit agarde qe la pleyntif recoverast la garde et noun pas damages, quia per⁵ statutum, ubi⁶ proclamatio datur, non fit mentio de damnis.—Et le pleintif pria bref a Vicounte daltre counte, qe⁷ loriginal fuit porte, a destreindre le defendant de⁸ deliverer le corps; et non habuit nisi ad Vicecomitem ubi breve originale dirigitur; et sil tesmoigne qe le defendant nad rien, ou qe⁹ lenfant est en altre counte, il avera donques bref a altre Vicounte.¹⁰—Et¹¹ istud accidit in fine istius termini.—Et nota par HILL. de statuto de custodiis¹²

A.D.
1341-2.
Proclama-
cion de
Garde.³
[Fitz.
Damage,
80;
Garde,
108;
Proses,
164.]

" &c., fuit seiscitus de prædictis
" shopis cum pertinentiis in do-
" minico suo, ut de feodo et jure,
" qui quidem Thomas eandem
" shopas cum pertinentiis delit
" ipsi Hugoni tenendas sibi et he-
" redibus suis in perpetuum, quo
" tempore idem Hugo infra æta-
" tem fuit, et postea idem Thomas
" obiit, post cujus mortem præ-
" dicta Isabella seiscivit custodiam
" ipsius Hugonis et etiam prædic-
" tarum shoparum per minorem
" ætatem ipsius Hugonis, clamando
" custodiam illam ratione nutri-
" turæ, &c., et postea, durante mino-
" ri ætate ipsius Hugonis, prædicta
" Isabella, quæ nullum statum ha-
" buit in prædictis shopis nisi cus-
" todiam ratione nutrituræ tantum,
" &c., fecit prædictam chartam præ-
" dicto Waltero et posuit ipsum
" in seisinam virtute chartæ illius,
" et sic tam ipsa, per liberationem
" seisinæ illius quam prædictus
" Walterus, per matrem suam, et
" per receptionem ejusdem seisinæ,
" disseisitores ipsi Hugoni extite-
" runt, et de qua quidem disseisina
" actio sua prædicta jam fundata

" est, unde petit judicium si virtute
" chartæ prædictæ ab actione sua
" præcludi debeat in hac parte, &c.
" Et Rogerus dicit quod præ-
" dicta Isabella, tempore confec-
" tionis chartæ prædictæ prædicto
" Waltero factæ, habuit feodum in
" prædictis tenementis, et non
" nomine custodiæ tantum, prout
" prædictus Hugo superius allega-
" vit."

Issue was joined thereon. The award of the *Venire* appears, but nothing further.

¹ From the five MSS. as above.

² The marginal note is from L. In T., 25,184, and Harl., it is Garde only; in 16,560, Proclamacion only.

³ L., proclamacion fut, instead of a la proclamacion.

⁴ The words par quei are not in L.

⁵ per is not in L.

⁶ L., ibi.

⁷ T., et.

⁸ de is from L. alone.

⁹ Harl., et.

¹⁰ T., Viscounte.

¹¹ Et is from T. alone.

¹² T. and L., custodia.

No. 29.

A.D. 1341-2. "saving to him his action elsewhere if he have right to the same" (that is to say, the Statute of Marlborough)¹ that, when the defendant loses by Proclamation, he shall not have an action in respect of the same wardship.

Vocatis
partibus on
suggestion
of party,
for the an-
nulling of
a judg-
ment on a
writ of
Annuity,
by reason
of matter
which had
occurred
since, &c.

(29.) § A clerk recovered an annuity against the Abbot of Croyland, and then at each term for payment sued a *Fieri facias*.—And the specialty on which he recovered was conditional, that is to say until he should be advanced to a suitable benefice. And the Abbot went into the Chancery and made his suggestion that at a later time he tendered (to that clerk who recovered) a vicarage which was in his patronage, and that the clerk refused it, and that so the annuity was extinguished. And upon that he had a writ to the Justices comprising his case, and moreover directing "that having called the parties, they should do full justice." Thereupon a *Venire facias* issued against the clerk, and he came.—*Gayneford* made a declaration to the effect that the vicarage of Friston, which is worth forty marks, was tendered to the clerk by the Abbot, in the presence of A., B., and others, and that he refused it, by reason whereof the annuity was extinguished, and that notwithstanding that extinguishment he had sued execution for the annuity, as well after as before, in deceit of the Court—*Thorpe*. Judgment of the writ; for this suit is in the nature of a Deceit, in which case he ought to have an original writ of Deceit, on which writ the party should have a day and answer.—HILARY. Answer to this writ.—*Thorpe*. We do not admit the vicarage to be of

¹ 52 Hen. III. (Marlb.), c. 7.

No. 29.

qe voet *salva sibi alias*¹ *actione si jus habeat ad eandem*, Marleberge, qe, quant le defendant perde par proclamacion, de cele² garde il navera pas accion.³ A.D. 1341-2

(29.)⁴ § Un clerk recoveri une annuyte vers labbe de Crouuland⁵ et puis a chesqun⁷ terme suyst *Fieri facias*.—Et lespecialte par quel il recoverist fuit⁸ condicionel, tanqe il fuit avance a covenable benefice.—Et labbe ala en la Chauncellerie et fist sa suggestioun qe de puisne temps il tendist a celuy clerk qe recoveri une vicarie qe fut⁹ de soun patronage, quele il refusa, issint¹⁰ lanuite esteynt.¹¹ Et sur ceo avoit bref as Justices compernant soun cas, et outre *quod vocatis partibus, facerent justitias complementum*; par quei *Venire facias* issit vers le clerk, qe vynt.—*Gaym.* fist une moustrance¹² coment la vicarie de Frystone,¹³ qe vaut¹⁴ xl. marz, fuit tenduz a luy par labbe en la presence de A., B., &c., quele il refusa, par quei lanuite fuit esteint, et *non obstante* cel esteyndre il suyst execucion del annuyte, auxi bien apres come devant, en deceite de la Court.—*Thorpe.* Jugement du bref; qar ceste suyte est en nature de un¹⁵ desceite, en quel cas il duist aver bref original de la desceite, par quel bref partie duist aver jour et¹⁶ respons.—*HILL.* Respones a ceo bref.—*Thorpe.* Nous ne conissons pas

Vocatis partibus sur suggestion de pardi [sic], en anentissement dun jugement sur un bref dannuite, par fait avenu de puisne temps, &c.¹ [Fitz., Suggestion, 14.]

¹ *alias* is not in 16,560.

² L., tiel.

³ In 25,184 are added the words *Vide contrarium Pascha vij Regis nunc, per HIRLE.*

⁴ From the five MSS., as above.

⁵ The marginal note is from 25,184 alone. In T. it is *Fieri facias*, and in the other three MSS. *Annuite.*

⁶ So in 25,184; L., B. In T., 16,560, and Harl., there is no mention of the name.

⁷ L., ascun, instead of a chesqun.

⁸ fuit is not in Harl.

⁹ The words qe fut are from L. alone.

¹⁰ Harl., par quei.

¹¹ Harl., fuit esteynt.

¹² L., demonstracion.

¹³ Frystone is from L. The other MSS., K.

¹⁴ L., valute.

¹⁵ un is from L. alone.

¹⁶ The words jour et are from T. alone.

Nos. 30-32.

A.D. 1841-2. such value as they suppose, and this we say on account of any tender which may be made hereafter; and we tell you that he did not tender the vicarage, as he says; ready, &c.—And the other side said the contrary.

Note as to Proclamation. And observe the diversity. (30.) § Note that on a writ of Wardship the Proclamation will not issue before the Grand Distress be returned; but on a writ of Mesne, on the first Grand Distress, the Sheriff will be commanded to make Proclamation. And so note in like manner the Statute.¹

Note as to process against a Bishop. (31.) § Note that a *Scire facias* issued upon an Annuity recovered; the Sheriff returned that the person was a clerk, &c.; the plaintiff had a writ to the Bishop *Levari facias denarios ita quod eos habeas, &c.* And the Bishop returned that he had sequestered to the value; and he made the same return two or three times, and he did not send the money here into Court.—The plaintiff prayed a writ to the Sheriff to distrain the Bishop to be here to answer as to the contempt, and also that the Sheriff should levy the money of the Bishop.—BASSET. Take a *Venire facias Episcopum ad respondendum, &c.*

Note: one shall not be admitted (32.) § Note that in a case in which a tenant made default after default, *Rokell* showed that he who made

¹ 52 Hen. III. (Marlb.), c. 7. 13 Edw. I. (Westm. 2), c. 9, and c. 35.

Nos. 30-32.

la vicarie estre de tiele value come il supposent, et ceo dioms pur tendre qe purra estre fait apres; et vous dioms qil ne nous tendist pas la vicarie, come il dist; ¹ prest, &c.—*Et alii e contra.*² A.D.
1341-2.

(30.)³ § *Nota* qen bref de garde la Proclamacion ne issera⁴ pas avant qe la graunte destresse soit⁵ retourne; mes en bref de mene, en la primer graunt destresse, comande serra al Vicounte qil face la Proclamacion. *Et sic nota similiter*⁷ *Statutum.* *Nota de Proclamations. Et nota diversitatem.*⁴
[Fitz. Proclamacion, 4.]

(31.)⁸ § *Nota* qe⁹ *Scire facias* issit hors de anuite recovere;¹⁰ le Vicounte retourna¹¹ *quod clericus est*, &c.; le pleintif avoit bref al Evesqe *Levari facias denarios ita quod eos habeas*, &c., qe¹² retourna qil avoit sequestre a la value; *et sic bis vel ter retornavit*, et il ne maunda pas les deners cy en Court.—Le pleintif pria bref a Vicounte¹³ a destreyndre Levesqe destre cy de respondre del contempt,¹⁴ et auxi qe le Vicounte levast les deners del Evesqe.—BASSET. Pernes vous *Venire facias Episcopum ad respondendum*, &c. *Nota de processu versus Episcopum.*⁵
[Fitz. Proses, 165.]

(32.)⁶ § *Nota* qe la ou le tenant fist defaute apres defaute, *Rokel* moustra qe celui qe fist¹⁵ defaute¹⁶ navoit Note :
homme
nyent res

¹ L., suppose. The words come il dist are omitted from T.

² The last sentence is omitted from T. and 25,184.

³ From the five MSS. as above.

⁴ The words in the marginal note subsequent to *Nota* are from 25,184 alone. In T. the note is Garde, and in Harl., *Nota de statut.*

⁵ L. and 16,560, istra.

⁶ 25,184, fuit.

⁷ *similiter* is from L. alone.

⁸ The marginal note is from 25,184 alone. In L. the note is

Scire facias, and in Harl. *Nota de Evesqe.*

⁹ L., qen un.

¹⁰ recovere is omitted from 25,184.

¹¹ retourna is omitted from Harl.

¹² Harl., et.

¹³ The words a Vicounte are omitted from L.

¹⁴ 16,560, comptent; 25,184, contempt.

¹⁵ T., fait. The word is omitted from L.

¹⁶ 16,560, est mis avaunt, instead of defaute.

No. 33.

A.D.
1341-2.
to defend
his right
on default
of tenant
by Statute
Merchant.

default had only the estate of one who was tenant by Statute Merchant, and he showed how the reversion belonged to B., who prayed to be admitted to defend his right.—And, notwithstanding this, seisin was awarded to the demandant.—*Quære* whether he who prayed to be admitted shall have assise during the time during which the other is to hold by the Statute Merchant.—And *Quære* whether he who is party to the writ shall have assise, inasmuch as he did not lose a freehold, because he was not tenant of a freehold when he lost.

Note:
Scire facias upon
the note of
a fine, and
note that
an Aid-
prayer lies.

(33.) § Note that *Scire facias* upon the note of a fine was sued against James Freysel, and he prayed aid, as tenant for term of life by reason of a lease made by A.—*Thorpe*. James had the fee on the day when the writ was purchased; ready, &c.—And the other side said the contrary.—And so note that aid-prayer, and not voucher, lies in a *Scire facias*.—*Quære* whether an essoin lies for the person who is prayed in aid.—No, for he shall be garnished and not summoned.

No. 33.

forsqe lestat un qe fuit tenant par statut marchant, et moustra coment la reversion fuit a B., qe pria destre resceu a defendre soun dreit.—*Et hoc*² *non obstante*, seisine fuit agarde al demandant.³—*Quære* si celuy qe pria avera assise⁴ deinz le temps qe lautre duist tener par lestatut marchaunt.⁵—*Et quære* si celuy qest partie au bref avera assise,⁶ desicome il ne perdist⁷ pas fraunc tenement, *quia non fuit tenens de libero tenemento quando amisit*.⁸

A.D.
1341-2.
ceun a defendre son dreit par defaute du tenant par lestatut marchaunt.¹
[Fitz. Rescit, 100.]

(33.)⁹ § *Nota* qe *Scire facias* hors dune note fuit suy vers James¹¹ Freysel,¹² et pria eide come tenant a terme de vie par cause de lees fait par A.—*Thorpe*. James avoit¹³ fee jour de bref purchase; prest, &c.—*Et alii e contra*.—*Et sic nota* qe eide priere gist en *Scire facias*, et noun pas voucher.—*Quære* si essone gist pur celuy qest prie en eide,—Non, qar il serra garny et noun pas soimons.¹⁴

Nota:
Scire facias hors dun note, et *nota* qun eide prier y gist.¹⁰

¹ The words in the marginal note, subsequent to *Nota*, are from 25,184 alone.

² *hoc* is from L. alone.

³ The words al demandant are from L. alone.

⁴ 16,560, seisine; L. and 25,184, lassise.

⁵ marchaunt is from 25,184 alone.

⁶ L., lassise.

⁷ L., perdist.

⁸ L., admisit.

⁹ From the five MSS. as above, but corrected by the record, *Placita de Banco*, Hilary, 16 Edw. III., B. 158 d.

¹⁰ The whole of the marginal note, except the words *Scire facias*, is from 25,184 alone.

¹¹ Harl., J.

¹² T., Friselle; L., Fryssel.

¹³ Harl., y avoit, instead of James avoit.

¹⁴ The last sentence is from T. alone. According to the record the fine was levied in the year 1 Edward III. between James Freysel, plaintiff, and John Louekyn, deforciant, of a messuage and land in Risborough (Bucks). James acknowledged the tenements to be the right of John as those which John had of his gift, and John granted and rendered them to James, to be held of the chief lords of the fee, for the life of James, with remainder to Thomas son of James in tail, *in perpetuum* "ac jam, ex insinuatione prædicti Thomæ filii Jacobi, accepit Rex quod prædictus Jacobus jam obiit, et quod quidam Jacobus filius Jacobi Freysel de Bledelawe prædicta tenementa modo ingressus est, et illa tenet contra formam finis prædicti." Therefore a *Sci.*

Nos. 34, 35.

A.D.
1341-2.
Note as to
Protection,
and Note
that Pro-
tection lies
for a
vouchee on
the return
of the
summons.

(34.) § Note that one who was vouched on a writ of Wardship would have put the parol without day by a Protection.—HILLARY. He is not yet a party, for the defendant does not proffer himself against him, nor shall the defendant be called here except at the suit of the plaintiff, and the defendant has no need to sue against you who are vouched until the plaintiff sues against him; and in the absence of the parties the parol cannot be put without day, &c.—I think the Protection will be allowed.

*Scire
facias* :
Execution
upon a
judgment,
where the
present
tenant was

(35.) § Note that the wife of Edmund de Passele demanded her dower, and recovered, and afterwards sued a *Scire facias* against another tenant, who came and said that the person against whom she recovered was not tenant.—Thorpe. That is not an issue unless you

Nos. 34, 35.

(34.)¹ § *Nota* qun qe fuit vouche en bref de garde
 voleit par protexioun aver mys la paroule saunz jour
 —HILL. Il nest pas partie unquore, qar le defendant
 ne se profry pas vers luy, ne le defendant ne serra
 pas demande cy³ si ceo⁴ ne fuit a la suyte le pleintif,
 et il nad pas mestier⁵ de suir vers⁶ vous qe estes
 vouche tanqe le pleintif sue vers⁶ luy; et homme
 ne poet saunz partie mettre la paroule saunz jour, &c.—
Credo qe la proteccion serra alowe.⁷

A.D.
 1841-2.
Nota de
 Proteccion,
 et *Nota* qe
 la Pro-
 texion gist
 pur un
 vouche
 al *Sum-
 moneas* re-
 tourne.¹

(35.)⁸ § *Nota* qe la femme Edmund de⁹ Passele¹⁰
 demanda soun dower, et recoveri, et puis suit vers un
 altre tenant *Scire facias*, qe vient et dit qe celui vers
 qui ele recoveri ne fuit pas tenant.—*Thorpe*.¹¹ Ceo nest
*Scire
 facias* :
 Execucion
 hors dun
 jugement,
 ou letenant
 ore ne fuit

fa. was to issue for James son of
 James to show cause why the tene-
 ments should not remain to Thomas
 son of James. The parties appear-
 ed, "et prædictus Jacobus filius
 " Jacobi dicit quod quidam Thomas
 " Castel fuit seiscitus de prædictis
 " tenementis cum pertinentiis ut de
 " feodo, et tenementa illa dimisit
 " eidem Jacobo filio Jacobi te-
 " nenda ad terminum vite ipsius
 " Jacobi, et sic dicit quod ipse
 " tenet tenementa illa ad terminum
 " vite sue, et quod reversio eorum
 " dem tenementorum pertinet ad
 " ipsum Thomam Castel, sine quo
 " non potest tenementa illa dedu-
 " cere in judicium, et petit auxilium
 " de ipso Thoma, &c.
 " Et Thomas filius Jacobi dicit
 " quod prædictus Jacobus filius
 " Jacobi, die impetrationis brevis
 " sui prædicti, habuit feo-
 " dum in prædictis tenementis, et
 " hoc petit quod inquiratur per
 " patriam, et Jacobus similiter."
Award of Venire.

After the jurors had been tried,
 elected, and sworn, and were "pa-
 " rati ad dicendum veredictum
 " suum, prædictus Jacobus filius
 " Jacobi fecit defaultam, &c. Ideo
 " fiat inde executio, &c. Et idem
 " Jacobus in misericordia."

- ¹ From the five MSS. as above.
- ² The marginal note is from 25,184 alone. In T. the note is Voucher; in L. and 16,560, Garde; and in Harl., *Nota*.
- ³ cy is from L. alone.
- ⁴ Harl., se.
- ⁵ Harl., moustre.
- ⁶ L., devers.
- ⁷ The last sentence is from Harl. alone.
- ⁸ From the five MSS. as above, but corrected by the record, *Placita de Banco*, Hilary, 16 Edw. III., B^o. 127 d.
- ⁹ de is omitted from all the MSS. of Y.B.
- ¹⁰ 16,560, Bass.; Harl., Basset; 25,184, par assise.
- ¹¹ *Thorpe* is not in Harl.

No. 35.

A.D.
1841-2.
not ad-
mitted to
defeat it on
a question
as to the
tenancy
being in
the person
against
whom the
recovery
was ad-
judged,
without
showing a
cause.
The con-
trary is
law, &c.

say that you yourself or some one whose estate you have was tenant; for the plea does not lie in the mouth of another person.—*Gayneford*. Whoever was tenant, if that person against whom she had her judgment was not tenant, neither the judgment nor the recovery was of any value.—*HILLARY*. You say nothing why execution should not be had against you.—*Gayneford*. Then we tell you that J., against whom she recovered, had nothing, but we were then tenant; ready, &c.—*Thorpe*. J. was tenant; ready, &c.—And the other side said the contrary, as above.

No. 35.

pas issue saunz dire qe vous mesmes ou asqun qi estat vous avez fuit tenant; qar en bouche d'altri ne gist pas le plee.—*Gayn.* Qi qe fuit tenant, si celuy ne fuit pas tenant vers qi ele avoit soun jugement, le jugement ne le recoverir ne fuit pas de value.—*HILL.* Vous ne dites rien pur quei execucion ne se fra vers vous.—*Gayn.* Donques vous dioms qe J.,² vers qi ele recoveri, navoit riens, einz nous fumes tenant adonques; prest, &c.—*Thorpe.* Qe J. fuit tenant; prest, &c.—*Et alii e contra, ut supra.*³

A.D.
1341-2.
pas resceu
a defaser
sur tenance
en cely
vers qi le
recoverir
se tailla
sans cause.
*Contra-
rium est
lex, &c.*¹
[Fitz.
*Scire
facias, 4.*]

¹ The marginal note subsequent to the words *Scire facias* is from \$5,184 alone. In 16,560 the note is Dower only.

² L., James.

³ According to the record the Sheriff was commanded to *Scire facere* Hugh son of Robert de Elvestede (Elstead in Sussex) to appear and show (together with the said Robert) wherefore Joan late wife of Edmund de Passele should not have her seisin of the third part of the manor of Cremosham in Pageham (Pagham?), which she recovered against John son of Edmund de Passele, "et unde idem Robertus in Curia hic dixit quod ipse tenet manerium prædictum conjunctim cum prædicto Hugone sine quo, &c. Et Vicecomes nihil inde fecit, sed mandavit quod præcepit Johanni de Brandhurst, ballivo libertatis Archiepiscopi Cantuariensis de Pageham, qui nihil inde fecit."

Therefore a *Non Omittas Scire facias* was to issue. This part of the record is not represented in the report.

The Sheriff, however, was also commanded to *Scire facere* John de Passele to appear and show, to-

gether with Thomas de Weyville, why the said Joan should not have her seisin of the third part of 30s. of rent, "cum pertinentiis," in Rothyngdene (Rottingdean), Winchelsea, and la Rye, which she recovered against the said John son of Edmund, "et unde idem Thomas in Curia hic dixit quod ipse tenet redditum prædictum, ad terminum vite sue, ex dimissione prædicti Johannis de Passele, sine quo non potest præfatus Johannes inde respondere, &c. Et ipse non venit. Et Vicecomes modo mandavit quod scire fecit ei per Johannem Herbard, et Willelmum Courtman. Ideo prædictus Thomas respondet sine, &c. Et idem Thomas dixit quod prædicta Johanna executionem versus eum de prædicta tertia parte prædicti redditus habere non debet, dicit enim quod prædictus Johannes filius Edmundi versus quem, &c., die impetrationis brevis sui super quo ipse recuperavit, nihil habuit in prædicto redditu, immo idem Thomas tunc tenuit eundem redditum, &c. Et hoc paratus est verificare, et petit judicium, &c. Et Johanna dicit quod præ-

Nos. 36, 37.

A.D.
1841-2.
Plaint of
taking of
beasts re-
moved
into the
King's
Bench by
the plain-
tiff, and
for cause
shown.
Note this,
&c.

(36.) § Note that a plaint of taking of beasts was pending in Queen Philippa's Court of A.; and it was removed, by writ of *Recordari facias loquelam*, into this Court, by the plaintiff. And note that there was a cause assigned in the record, that is to say, "because the person who distrained is steward of the aforesaid Court." And note that the COURT said that it had never been seen that the plaintiff should assign a cause for the removal.—*Derworthy* counted.—*Thorpe*. The place in which the taking was effected is parcel of the manor of Cookham, which is ancient demesne of our Lord the King; judgment, whether you ought to have cognizance.—*Derworthy*. You have allowed the removal, and you have come into this Court as a party, so you have affirmed the jurisdiction.—*Thorpe*. The removal was made at your suit, and it was necessary for us to allow it.—*Derworthy*. You are yourself steward of the Court, and that is the cause of the removal.—This objection was not allowed.—*Derworthy*. We can not deny that it is ancient demesne.—*BASSETT*. Therefore the COURT adjudges that you do take nothing by this writ, but that you be in mercy, and without Return.

*Scire
facias*, and
note as to
garnish-
ment.

(37.) § Note that Thomas Brewes sued a *Scire facias* upon a fine against John son and heir of John de Moubray. The Sheriff returned, "I have warned John, &c. to be before the Justices at Westminster

Nos. 86, 87.

(86.)¹ § *Nota* qune pleynte de prise des avers fuit pendaunt en la Court la reigne Phelippe de A.; et par *Recordari* fuit remue ceinz par le pleintif. *Et nota* qil y² avoit cause en le record *quia ille qui distrinxit est senescallus Curie predictæ. Et nota* qe COURT dit qe ceo nad pas este vieu qe le pleintif assignereit cause del remuement.⁴—*Derworthy* counta. —*Thorpe*. Le lieu ou la prise se fist est parcel de manior de Cokham, qele est auncienne demene nostre seignur⁵ le Roi; jugement, si vous devez conustre.—*Derworthy*. Vous avez suffert le remuement, et estes venuz cy come partie, issint avez afferme jurisdiction.—*Thorpe*. Le remuement est fait a vostre suyte, et il nous⁶ covensist⁷ ceo suffrir.—*Derworthy*. Vous estes mesmes senescal de la Court, et cest la cause del remuement.—*Non allocatur*.—*Derworthy*. Nous ne pooms dedire qe ceo nest aunciene demene.—*BASSET*.⁸ Par quei agarde la COURT qe vous ne preignez rien par ceo⁹ bref, mes soiez en la mercy saunz retourn.

A.D. 1341-2.
Prise des avers remue ceinz par le pleintif, et par cause.
*Hoc nota, &c.*³
[Fitz. Cause de remover ple, 13.]

(87.)¹ § *Nota* qe Thomas Brewes¹¹ suyst *Scire facias* vers Johan fitz et heir Johan¹² de¹³ Moubray¹⁴ hors dune fyne. Le Vicounte retourna, *Scire feci Johanni, &c. ad essendum coram Justiciariis apud Westmonas-*

*Scire facias, et nota de garnisement.*¹⁰

"dictus Johannes filius Edmundi,
"die impetrationis brevis sui, . . .
"fuit tenens de predicto reddito
"ut de libero tenemento. Et hoc
"petit quod inquiratur per patriam." Award of *Venire*. The result is not shown.

¹ From the five MSS. as above.

² The marginal note is from 25,184 alone. In T. the note is *Nota*; in 16,560, *Replegiari*; in Harl., *Replevine*. In L. there is none.

³ y is omitted from L. and Harl.

⁴ 16,560, *remenant*.

⁵ The words nostre seignur are from L. alone.

⁶ L., vous.

⁷ 25, 184, covient.

⁸ *BASSET* is omitted from L.

⁹ L., vostre.

¹⁰ The words *et nota de garnisement* are from 25,184 alone.

¹¹ L., Brewis.

¹² The words fitz et heir Johan are omitted from Harl.

¹³ de is from L. alone.

¹⁴ L., M.

No. 38.

A.D.
1341-2.

"according to the tenor of this writ." And because the Sheriff did not warn him to do a certain thing, viz., "to do what the writ requires," the Sheriff was amerced.

Scire facias, in Chancery, for our Lord the King, to repeal his own charter, because it was granted to the damage of him and of others without due process of law. And note that the writ was adjudged good, and that the matter was pleaded in the same Court there. Below, in Michaelmas Term in the 17th year, by *Scire facias* in

(38) § The King by his charter granted franchises to the Burgesses of Wells, that is to say, that they might elect and make one of themselves to be Mayor, and that they might have cognisance of pleas within the Borough, and several other franchises. And afterwards, at the suit of the King, a *Scire facias* issued against the Burgesses of Wells, to the effect that they should be before the King in his Chancery to show why the said charter, granted to the damage of the King and of the people of the same county, as appears by evidences shown to the King and his Council, and which charter was sued out in deceit of the King's Court without the process *Si sit ad damnum*, ought not to be annulled and repealed.—The Burgesses came by attorney, and exception was first taken to the Sheriff's return; and it was in the words *Scire feci, &c., quod sint coram Rege ad ostendendum, &c.*, and did not state in what Court, that is to say, in the Chancery or in the King's Bench.—This exception was not allowed.—And the damages caused to the King were assigned:—That whereas the King, in the time of the vacancy of the Bishopric of Bath and Wells, was accustomed to be answered for the issues of the perquisites of the Court of Wells to the amount of £160

No. 36.

terium secundum tenorem istius brevis. Et pur ceo
 qe le Vicounte ne lui garnist¹ pas a faire certeyne
 chose, *videlicet, ad faciendum quod breve requirit*, le
 Vicounte fuit amercie.

A.D.
 1341-2.
 [Fitz.
*Retourne
 del Vi-
 count, 77.*]

(38.)² § Le Roi par sa chartre graunta franchises
 a les burgeis de Welles,⁴ qils puissent⁵ eslire et faire
 Mair⁶ deux mesmes, et qils ussent conissaunce des
 plees deinz le Burghes, et plusours autres fraunchises.
 Et puis, a la suyte le Roi, *Scire facias* issit vers les
 burgeis de Welles, qils feussent devant le Roi en sa
 Chauncellerie⁷ a moustre pur quei la dite chartre,
 graunte a damage du Roi et del poeple de mesme le
 counte, come piert par evidences moustres au Roi et
 soun conseil, et quele chartre fuit suy en deceite de
 la Court le Roi saunz proces *Si sit ad damnum*, ne
 deyme estre anienti⁸ et repelle.—Les burgeis par
 attourne vyndrent, et le retourn de Vicounte primes
 fuit challenge; et⁹ voleit *Scire feci, &c. quod sint
 coram Rege ad ostendendum, &c.*, et ne voleit pas en
 quele place, saver en Chauncellerie ou en Baunk¹⁰ le
 Roi.—*Non allocatur exceptio*.—Et les damages faitz
 au Roi furent assignes, qe par la ou le Roi, en temps¹¹
 de voidaunce del Evesche de Baath¹² et Welles, soleit
 estre respondu des issues de¹³ perquisites¹ de la Court
 de Welles¹⁵ de viii^{xx}¹⁶ *li.* ceo¹⁷ decrest au Roi par my

*Scire
 facias*³ en
 Chaun-
 cellerie, pur
 nostre
 Seignur le
 Roi, a re-
 peller sa
 chartre
 demene,
*quia graunte
 a damage
 de ly et
 des autres
 sans due
 proces de
 ley. Et
 nota qe le
 bref fuit
 agarde bon,
 et la chose
 plede en
 mesme la
 place il-
 loques. In-
 fra M.
 xviij, pro
 Episcopo
 Wyntoni-
 ensi, versus
 Fratres
 Carmelitas*

¹ T., gary; Harl. garnast.

² From T., 16,560, 25,184, and Harl., the case being omitted from L.

³ The words in the marginal note subsequent to *Scire facias* are from 25,184 alone. In 16,560 the note is *Franchyse de Welles*.

⁴ 16,560, Villes.

⁵ T., purrount.

⁶ Harl., Meire.

⁷ Harl., Chauncelrie.

⁸ Harl., an ente.

⁹ 16,560 and Harl., qe.

¹⁰ 25,184, Comune Bank.

¹¹ Harl., tempes.

¹² T., Baaz; Harl., Baa.

¹³ 25,184, et.

¹⁴ 16,560, perquisitis.

¹⁵ T. and Harl., W.

¹⁶ 16,560 and Harl., iiij^{xx}; 25,184,

xxij.

¹⁷ Harl., et.

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1341-2.
Chancery,
on behalf
of the
Bishop
of Win-
chester,
against the
Carmelite
Friars of
Winches-
ter, the
King's
Charter
was re-
voked by
judgment.¹

the King suffered decrease to that amount by means of this grant, because the Burgesses have cognisance, and also have the issues, fines and amercements, and ransoms which would be the King's if the grant did not exist, and the same profit is lost to the Bishop when the see is full, and other damages.—*R. Thorpe*. This charter whereby the franchises are granted to us is of record, which is equivalent to a judgment; and we do not understand that you have any warrant to repeal this charter, which issued by the will and command of the King, for no one can do that without a commission from the King, or else in Parliament; for by the suit it is supposed that the grant was erroneous because without process, and error committed in this Court can not be redressed in the same Court.—*PARNING*. This suit is taken for the King, and the King shall not sue by petition in Parliament about a matter which concerns himself; and if we can issue a commission to some one else to try this matter touching the King, *a fortiori* we can try it ourselves.—*R. Thorpe*. In the case which there was between Little Yarmouth and Great Yarmouth the suit was made in Parliament to reverse the grant and the King's charter.—*PARNING* (CHANCELLOR). That was between party and party, and it was sued by petition in Parliament and was adjourned into the King's Bench; but the King shall sue in his own Court where he pleases; therefore answer.—*R. Thorpe*. You see clearly how this suit takes its origin from a deceit, in that the charter was granted without the process *Si sit ad damnum* having been sued, in which a case *Venire facias* would lie and not a *Scire facias*.—*PARNING*. A *Scire facias* lies on a writ of Error.—*R. Thorpe*. That is true, and is law. Error shall be

¹ Y. B., Mich.. 17 Edw. III., No. 53, fo. 89.

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cele graunt, pur ceo qe les burgeis ount conissaunce, et auxi ount issues, fyns, et amerciementz, et raunsecouns¹ qe serroient au Roi si le graunt ne fuit, et mesme la chose depiert al Evesqe quant le see est pleyn, et altre damages.—*R. Thorpe*. Ceste chartre est de recorde par quele les fraunchises nous² sount grauntes, quele countrevaut jugement; et a repeller ceste chartre, quele est issue de la volunte et comaundement le Roi, nentendoms pas qe vous eiez garrant, qar ceo ne poet nule homme faire saunz commission du Roi, ou autrement en Parlement; qar par la suyte est suppose qe le graunte est erroigne *quia sine processu*, et erreur qest fait en ceste place ne poet en mesme la place estre redresse.—*PARN*. Ceste suyte est pris pur le Roi, et le Roi³ par petition ne suira pas en Parlement de chose qe luy touche; et si nous puissoms faire commissioun a altre a trier ceste chose touchaunt le Roi, a pluis fort nous le poms mesmes trier.—*R.⁴ Thorpe*. En le cas qe fuit entre Petit Gernemuthe⁵ et Graunte Gernemuthe⁶ la suyte fuit fait en Parlement pur reverser le graunt et la chartre le Roi.—*PARN*. (*CHAUNCELIER*).⁶ Ceo fuit entre partie et partie, et fuit suy par petition en Parlement et ajourne en Baunk le Roi; mes le Roi siwera en sa Court demene ou luy plerra; par quei responez.—*R. Thorpe*. Vous veez bien coment ceste suyte prent sa nesaunce⁷ dune desceite, de ceo qe saunz proces suir *Si sit ad damnum* la chartre fuit graunte, en quel cas *Venire facias* girreit⁸ et noun pas *Scire facias*.—*PARN*. En bref derrouer gist *Scire facias*.—*R. Thorpe*. Ceo est verite,

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1341-2.
Wyntonia,
per Scire
facias in
Cancel-
laria,
Carta Ra-
gis [per]
judicium
revocatur.
[Fitz.
Briefs,
651;
Graunt,
58; *Re-*
tourne del
Vicount,
78.]

¹ T., raunceouns.² nous is not in 16,560.³ The words et le Roi are omitted from Harl.⁴ R. is not in T.⁵ Harl., Jernemuthe.⁶ The word CHAUNCELIER is omitted from 16,560 and Harl.⁷ 16,560, nesaunce; Harl., nusaunce.⁸ T., gist.

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assigned in respect of a matter which may appear by record, and not in respect of a matter enquirable outside the record; but in this case you can never prove error by anything which can appear from the record, for the charter is good and full enough.—PARNING. The suit of *Si sit ad damnum* when made and the charter granted are all one record; and if the process which should be the foot and foundation of the grant be wanting, all is error.—*R. Thorpe*. It is not so; for even though a *Si sit ad damnum* never issued, if it cannot be shown that it was to the King's damage, the charter shall never be repealed, and this damage must be made to appear by surmise, and that must be tried, and the trial must be on the mise of the parties and not otherwise; and if we were to make default you would not be able of yourselves to defeat this charter without other information or apprising; and heretofore in a like case between the people of Little Yarmouth and Great Yarmouth a *Venire facias* issued.—*W. Thorpe*. The Court is apprised by matter of record in the Exchequer that it is to the King's damage, of which matter the King was not apprised at the time of the grant; and therefore go from the bar and you will see what will be done in your absence; and in this Court issues are never forfeited; wherefore by that suit of *Venire facias* they shall never come in answer.—And the point was touched upon that, where judgment is given against a party who is dead, a writ of Deceit lies; but this was

Observe
the reason
why pro-
cess is
made in
Chancery
by *Scire
facias*.

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et ley.¹ Lerrour serra assigne de chose qe poet² apparer par³ record [et noun pas de chose enquerable hors de record; mes en ceo cas vous ne poez jammes par chose qe purra apparer del record]⁴ prover errour, qar la chartre est assez bone et pleyne.—PARN. La suyte fait *Si sit ad damnum* et la chartre graunte, tut est un record; et si le proces qe duist estre pee⁵ et foundement du graunt y faut, tut est errour.—*R. Thorpe*. Il nest pas issi; qar tut ne issit unques⁶ *Si sit ad damnum*,⁷ si homme ne purra moustrer qe ceo fut⁸ a damage le Roi, jammes ne serra la chartre repelle, quele damage covynt vener par surmise, quel covynt estre trie, et ceo⁹ covient estre a mise de partie et autrement nient; et si nous¹⁰ fesoms¹¹ defaute vous ne purrez pas, de vous mesmes, ceste chartre saunz altre enfourmesoun et aprise defaire; et altrefoitz en tiele cas entre les gentz de Petit G. et Graunt G. issit *Venire facias*.—*W. Thorpe*. Court est appris par chose de record en leschequer qe cest a damage du Roi, de quele chose le Roi ne fuit appris al temps del graunt; et pur ceo alez de la barre, et vous verrez ceo qe homme fra en vostre absence; et en ceste place issues ne sount jammes forfaitz;¹² par quei par cele suyte de *Venire facias* jammes ne vendront en respons.—Et fuit touche quant jugement est fait vers partie qest mort qe¹³ bref de deceite igist;¹⁴ *quod fuit negatum*, mes bref *facias*.¹⁵

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1341-2.Vide causam
pur
quei
homme fet
proces en la
Chauncellerie
par
Scire
facias.¹⁵

¹ The words ceo est verite et ley are omitted from T. and 25,184. In Harl. the words la ou are substituted for ley.

² Harl., ne poet.

³ 25,184, del.

⁴ The words between brackets are not in 25,184.

⁵ T., pie.

⁶ Harl., seit, instead of issit unques.

⁷ In Harl. the word suy is inserted after the word *damnum*.

⁸ T., soit.

⁹ T., ore.

¹⁰ nous is not in T.

¹¹ T., feimes.

¹² 16,560, fors fees.

¹³ T., et.

¹⁴ 16,560, ne gist.

¹⁵ The marginal note is from 25,184 alone.

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341-2.

denied, and a writ of Error in the King's Bench was said to lie; and if the tenant do not come upon a *Soire facias*, it shall be enquired whether he be dead or not.—*Quære*.—PARNING. Answer; we adjudge the writ to be good.—*R. Thorpe*. We tell you that the Burgesses have a Mayor, who is possessed of the franchise as much as they are, and who is their head, and in his mouth a defence lies to save the franchise, and he is not named in this writ; judgment of the writ.—*W. Thorpe*. The franchise was granted to the Burgesses only, and although they have made a Mayor by force of the charter which it is our object by this suit to repeal, and so to prove that they ought not to have a Mayor, there is no necessity in law that any others should be named besides those to whom the grant was made; for if I be disseised of my freehold by you, and you make of it a hospital, I shall bring the assise against you and the tenant, and shall not call him Warden, because my object is to defeat his title.—*R. Thorpe*. The reverse was taken for the cause of the judgment in the reversal of the judgment in the case of the chapel of Bedford in the King's Bench.¹—*W. Thorpe*. What you say is wrong; the cause there was that, in the suit *de procedendo ad judicium*, one supposed and styled himself Warden when he was not in the original writ styled Warden.—*R. Thorpe*. Will not a *Quo Warranto* in respect of the franchise be brought against the Mayor and Burgesses? —*W. Thorpe*. That writ is taken on a claim, and must be in accordance with the claim.—*R. Thorpe*. If a woman purchase a franchise and afterwards become *covert baron*, and such a suit has to be brought against the woman, her husband must be named.—PARNING.

¹ Y. B. Trin. 13 E. III., No. 60, and Trin. 15 E. III., No. 20.

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derrouer en Baunk le Roi; et si le tenant al *Scire facias* ne veigne nient, homme enquera si cely fuit mort ou noun.—*Quere.*—*PARNING.* Respondez; nous agardoms le bref bon.—*R. Thorpe.* Nous vous dioms qe les burgeis ount un Maire,¹ le quel est possessione de la fraunchise si avant com eux, et qest lour sove-reigne,² en qi bouche deufens gist pur³ salver la fraun-chise, le quel nest pas nome en ceo bref; jugement de bref.—*W. Thorpe.* La fraunchise fuit graunte seulement a les Burgeis, et tut eient eux fait Maire⁴ par force de la chartre quele nous sumes⁵ par ceste suyte a repeller et prover qils ne deivent pas Maire⁴ avoir, il ne bosoigne pas par ley qe altres soient nomes forsque ceux as queux le graunt fuit fait; qar si jeo soie disseisi de moun fraunc tenement par vous, et vous facez⁶ de ceo un hospital, jeo porteray lassise vers vous, et le tenant, et luy nomeray pas gardeyn, pur ceo qe jeo su a defaire soun noun.—*R. Thorpe.* Le revers fuit pris pur cause de jugement en le reverser de jugement de la chapelle de Bedeford en Baunk le Roi.—*W. Thorpe.* Vous ditez mal; la cause fuit la pur ceo qe, en la suyte *de procedendo ad judi-cium*,⁷ il luy supposa et noma gardeyn la ou il ne fuit pas en loriginal nome gardeyn.—*R. Thorpe.* Ne serra pas *Quo warranto* porte de⁸ la fraunchise vers Mair⁹ et les burgeis?—*W. Thorpe.* Cel bref est pris sur cleyme, et covient estre accordaunt al cleyme.—*R. Thorpe.* Femme qe purchace fraunchise, si ele soit covert¹⁰ apres de baroun, et tiele suyte fut a faire vers la femme, il coviendra nomer soun baroun.—

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1841-2.¹ 25,184 and Harl., Meir.² Harl., soverener.³ 25,184, de.⁴ 25,184, Meir.⁵ 16,560, suwoms.⁶ T., faites.⁷ 16,560 and Harl., assise.⁸ 16,560, vers.⁹ 16,560 and Harl., Meir.¹⁰ 16,560, se couvere; 25,184, se coure; Harl., se couvere, instead of soit covert.

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A.D.
1341-42.

The case is not similar ; for if he were now to bring a writ against the Mayor and Burgesses, the suit would affirm that there is a Mayor when there ought not to be one ; and no one shall be a party but those to whom the grant was made, and the grant was not made to the Mayor ; wherefore he shall not be named ; therefore answer.—*R. Thorpe*. The King is not apprised of the cause upon which he founds this suit, that is to say, of his damage and that of the people, by suit of a party or by indictment ; wherefore we do not understand that the King will be answered.—*PARNING*. You have been told that the King is apprised by a record of the Exchequer, which shall be caused to come if you will deny it ; therefore answer.—*R. Thorpe*. As to the point that the King has granted to us that we may choose a Mayor and Coroners, and have cognisance of pleas, and that we may enclose and crenellate the vill, this matter lies solely in the King's will and grace, and the profit is casual, and not an annual profit, which could be subject to extent, and in this case the suit of *Si sit ad damnum* is not to be made ; wherefore, as to that, judgment whether the charter ought to be repealed. And as to the other point, that is to say, that he has granted to us, to be quit of toll, murage, picage, pontage, stallage, &c., we and our ancestors and predecessors, Burgesses of Wells, have had it from time whereof there is no memory, so that this grant is not to the damage of the King or of any

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PARN. *Non est simile*; qar sil portast ore¹ bref vers² Maire³ et burgeis, la suyte affermereit qil serroit Maire³ ou nul deit estre; et nul serra partie forsque ceux as quex le graunt est⁴ fait, et graunt nest pas fait al Maire;⁵ par quei il ne serra pas nome;⁶ par quei responez.—*R. Thorpe*. Le Roi nest pas apris de la cause⁶ sur quele il fonde ceste suyte, saver, de soun damage et de poeple, par suyte de partie⁷ nenditement;⁸ par quei nous nentendoms pas qe le Roi voille estre respondu.—PARN. Homme vous ad dit qe par record del Eschequer, quel serra fait vener si vous le voillez dedire, le Roi est appris; par quei responez.—*R. Thorpe*. Quant a ceo qe le Roi nous ad graunte de eslire⁹ Maire³ et Coroners, et conissaunce des plees, et denclore la ville et corneller,¹⁰ ceste chose chiet soulement¹¹ en la volunte le Roi et sa grace, et le profit est casuel, et noun pas annuel, qe purra chere¹² en estente, en quele cas suyte de¹³ *si sit ad damnum* nest pas a faire; par quei, quant a ceo, jugement si la chartre¹⁴ deive estre repelle. Et quant al autre point, qil nous ad graunte destre quites de tolone,¹⁵ murage, picage, pontage, estallage, &c., nous et noz auncestres et predecessours, burgeis de Welles,¹⁶ lavoms eu de temps dount memorie¹⁷ nest, issi qe cel graunt nest pas damage au Roi ne a nul altre. Et

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1341-2.

¹ 16,560, ceo.

² 25,184, sur.

³ 16,560 and Harl., Meir.

⁴ T., fuit.

⁵ Harl., Meire.

⁶ 16,560, seisine.

⁷ The words *de partie* are omitted from 25,184.

⁸ 16,560, ne entendement.

⁹ Harl., delier, instead of *de eslire*.

¹⁰ 16,560 and 25,184, korneller; Harl., kiroeller.

¹¹ Harl., coment.

¹² 16,560, cheer; 25,184, cheier; Harl., cheir.

¹³ *de is* omitted from T.; 16,560 *de partie*.

¹⁴ T., sil, instead of *si la chartre*.

¹⁵ T., toum; 16,560, toune; Harl., toln.

¹⁶ Harl., Viles.

¹⁷ 25,184, memoire.

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1341-2.

one else. And as to the point that the King has granted to us to have a gaol and the keeping thereof, that is only for the keeping of the peace, and sounds rather in charge than in profit; judgment.—*W. Thorpe*. As to the first point, the king is put to damage if you have cognisance of pleas which belong to the Bishop, as the King is certified by record, and in respect of which the King, in time of vacancy, has been answered as to amercements and issues; and also if you shall not come out of the vill before the King's Justices to be on juries, as the charter purports, the King will lose issues. And as to the other point, as to being quit of toll, murage, &c., you say that you were quit before this grant; and that perchance was because you did not pay them, and non-payment does not acquit any one unless he was exempted by rightful title, because *in negatis non est usus*. And as to the third point, when you say that the keeping of a gaol is not a profit but a charge, that is not so; for it is found of record in the Exchequer that for the keeping of the gaol in that county the King is answered yearly for £24; and if you had the keeping thereof in that vill the farm would be diminished by so much. And since you claim these things on the ground of a bargain and a fine, in which case the King, if he be deceived in his bargain and covenant, can legally repeal it, judgment for the King, and we pray that the franchise may be reseized and the charter repealed.—*PARNING ad idem*. One would say that the King can not grant a franchise to the tenants of any one except himself,

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quant a ceo qe le Roi nous ad graunte davoit gaole et la garde de yeel, ceo nest forsque pur garde de la pees, et soune plus en charge qe en profit; jugement.—*W.¹ Thorpe*. Quant al primer point, le Roi est endamage si vous eiez conisaunce des plees quex attendent al Evesqe, come le Roi est ascerte² par record, et dount le Roi en temps vacaunt ad este respondu des amerciementz et issues; et auxi si³ vous ne vendres⁴ pas hors de la ville devant Justices le Roi destre en⁵ Jures, come la chartre voet, le Roi perdra issues. Et al altre point, de quitaunce de tolone,⁶ murage, &c., vous dites qe vous fuistes quites devant cest graunt; et ceo fuit⁷ par cas pur ceo qe vous nel fistes⁸ pas, et nounfesaunce nacquite [pas homme sil ne fuit acquite par title en⁹ dreit, *quia in negatis non est usus*. Et quant al terce point qe vous dites qe gard de gaole nest pas profit mes charge],¹⁰ ceo nest pas issi; qar homme trove de record en leschequer qe pur la garde de la gaole de¹¹ cele Counte¹² le Roi est respondu par an de¹³ xxiiij¹⁴ li.; et si vous ussez la garde en cele ville taunt decrestereit de la ferme.¹⁵ Et del houre qe vous clames cestes choses par bargayn et fyn, et en quel cas le Roi, sil soit desceu en soun bargayne et covenant, par ley il le poet repeller, jugement pur le Roi, et nous prioms qe la fraunchise soit reseisi et la chartre repelle.—*PARN. ad idem*. Home voet dire qe le Roi ne poet pas granter fraunchise a altri tenantz¹⁶

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1341-2.

¹ *W.* is omitted from T., 16,560, and 25,184.

² T., aserte.

³ si is not in 25,184.

⁴ 25,184, avendrez.

⁵ 25,184, si.

⁶ T., toun; Harl., tone.

⁷ The words graunt, et ceo fuit are omitted from 16,560 and Harl.

⁸ T., faites; 16,560, feistes.

⁹ T., de.

¹⁰ The words between brackets are not in Harl.

¹¹ Harl., en.

¹² 25,184, Court.

¹³ The words par an de are omitted from 16,560.

¹⁴ 16,560, xxiij; 25,184, xxiiij.

¹⁵ 16,560, somme.

¹⁶ 25,184, tenance.

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1341-2.

or to some lord; and you are the tenants of the Bishop.—*R. Thorpe*. All that is assigned for damage is damage to another person, who does not complain, and therefore it is strange; and suit of *Si sit ad damnum* has not been seen in such a case as this, where the King grants a franchise which is a regality, any more than in a grant of warren; and I well know that the King can not give anything except to his own damage, but nevertheless he ought not to repeal it.—They were adjourned.—At another day, the arguments being rehearsed, PARNING said, If you be the tenants of another person, the King ought not to grant to you a franchise to the prejudice of your lord, and so the charter is void, and especially inasmuch as it is to his own damage, of which he was not apprised. And, if you are the King's tenants, we will know what you pay to him; and, if you do not pay anything, we will cause that which you hold to be extended and valued, and you shall answer for the time past, for you have been the King's approvers, since you shew nothing from the King enabling you to hold quit, and you had the charter of King John by which he made you Burgesses, and that can only be understood to mean his Burgesses.—Afterwards by judgment in Michaelmas term, in the sixteenth year, the charter was repealed.¹

Formedon
in the
Descender.

(39.) § Formedon in the Descender on a gift to the

¹ The record of this important case (with various documents attached) has been found in the Public Record Office under the

head "Miscellaneous Rolls, &c. (Chancery), Bundle 13, No. 5." The contents have been described in the Introduction.

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forsqe ses tenantz demene, ou asqun seignur; et vous estes les tenantz Levesqe.—*R. Thorpe*. Quaunqe est assigne pur damage est altri damage qe ne se¹ pleynt² pas, et pur ceo il est mervaille; et homme nad pas vieu suir en tiele cas *Si sit ad damnum* ou le Roi graunt fraunchise qest chose regale nient pluis qe de graunt de garreyne; et jeo sai³ bien qe le Roi⁴ ne⁵ puit rien doner sil ne soit en damage a⁶ luy, mes nepurquant il nel deit pas repeller.—*Adjornantur*.⁷ A un altre jour, les resouns reherces, PARN., Si, vous soiez altri tenantes, le Roi ne deit pas graunter a vous fraunchise en prejudice de vostre seignur, et issi la chartre voide, et nomement quant cest en soun damage, de quei il nestoit pas appris. Et si vous soiez les tenantz le Roi nous saveroms ceo qe vous paieiz a luy; et si vous paieiz rien nous le feroms estendre et rente, et vous respondrez de temps passe qe avez este approuours le Roi, del houre qe vous moustrez rien du Roi qe vous tendrez quites, et vous ussez la chartre le Roi Johan par quel il vous fit burgeis, qe ne poet estre entendu mes ses burgeis.—Puis par agarde la chartre fuit repelle *termino Michaelis, anno xvj*.⁸

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1341-2.

(39.)⁹ § Descendere dun doun fait al aiel.—Le

Forme de
doun en
discendere.

¹ se is not in Harl.

² T., pleinent.

³ Harl., soi.

⁴ Harl., qil, instead of qe le Roi.

⁵ ne is not in Harl.

⁶ Harl., de.

⁷ The report ends here in 16,560 and Harl.

⁸ *Michaelis* is from the record. All the MSS. of Y.B. *Hilarii*, and all but 25,184, *xvij*.⁹

⁹ From T., 16,560, 25,184, and Harl., but compared with the record, *Placita de Banco*, Hilary, 16 Edw. III., R^o. 249. It there appears that the action was brought by William son of William de Chenny

(by William de Medewille, his guardian) against Henry atte Gate, in respect of land in Tortington (Sussex), against Henry Garland, Dean of Chichester, in respect of other land in Tortington, and against Richard Wyot of Ford, in respect of other land in Tortington, the whole of which lands William de Brakelsham, formerly Dean of Chichester, gave to Elias de Chenny in tail, "et quam, post mortem prædicti Eliæ et Willelmi filii et heredis ejusdem Eliæ præfato Willelmo filio et heredi ejusdem Willelmi filii Eliæ descendere debent."

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1841-2.
And note
as to
putting the
parol with-
out day.
The same
if he pref-
ered the
averment
that he had
nothing by
descent,
&c.

grandfather.—The feoffment, with warranty, of the demandant's father was pleaded in bar; and the tenant said that the father leased certain tenements for term of life to one B., rendering 4s. by the year, of which the demandant is seised, as well as of the reversion; and also he leased other tenements for a term of years, of the reversion of which the demandant is seised, and he is seised of other lands assets by descent in fee simple; judgment, whether an action, &c.—*Derworthy*. You see clearly how he has admitted the form; and as to his allegation that a reversion has descended to us, that is only of the same land which we demand by the form, and which reversion we are to defeat by our recovery. And also as to the reversion which he has placed in us elsewhere, that is only of the land which we demand by the same writ, by another *Præcipe*, against another person, which reversion we are to recover and extinguish, &c. And whereas he says also that we have lands by descent in fee simple in A., we tell you that we have nothing in A. except the reversion of a manor which was given to our father in fee tail, and for which we are bringing a writ of Formedon because our ancestor leased it for a term of life; judgment, and we pray seisin.—*R. Thorpe*. You are under age, and the plea which you plead is not admissible unless the deed of your ancestor were admitted, and that cannot be by you during your nonage.—*W. Thorpe*. Your plea in bar would be worth nothing if you had not alleged besides that we had assets by descent, and you show

No. 39.

feffement le pere le demandant fuit plede en barre, ove garrantie;² et dit qe le pere lessa certains tenementz a terme de vie a un B.,³ rendant iiij. par an., des queux le demandant est seisi, et de la reversion; et auxi il lessa altres tenementz a terme daunz, de quele reversion le demandaunt est seisi, et daltres terres assez par descente en fee simple; jugement si accion.⁴ —*Derworthy*. Vous vieiez bien coment il ad conu la fourme; et ceo qil ad allegge qe reversion nous est descendu, ceo nest forsque de mesme la terre quele nous demandoms par la fourme, et quele reversion nous sumes a defaire par nostre recoverir. Et auxi de la reversion quele il ad attache en nous⁵ ailliours, ceo nest forsque de terre quele nous demandoms par mesme le bref par altre *Præcipe* vers altre,⁶ quele nous sumes a recoverir et esteyndre, &c. Et la ou il dit auxi qe nous avoms par descente en fee simple en A., nous vous dioms qe nous navoms rien en A. save la reversion dun manoir quele fuit done a nostre pere en fee taille, et⁷ de quei nous portoms bref de fourme de doun pur ceo qe nostre auncestre le lessa a terme de vie; jugement, et prioms seisine. —*R. Thorpe*. Vous estes deinz age, et le plee qe vous pledes nest pas acceptable si le fait vostre auncestre ne fuit conu, et ceo ne puit estre de vous durant vostre noun age. — [*W.*⁸] *Thorpe*. Vostre plee en barre ne vaudra rien si vous nallegeastes ovesque ceo⁹ qe nous ussoms asset¹⁰

¹ The words in the marginal note, subsequent to *Forme de doun*, are from 25,184 alone. The note in Harl. is *Descendere*.

² The words *fuit plede en barre ove garrantie* are omitted from 16,560 and Harl.

³ As to the names, see note 10, p. 121.

⁴ The words *si accion* are omitted from 16,560.

⁵ 25,184, *vous*.

⁶ The words *vers altre* are omitted from 16,560.

⁷ *et* is omitted from T. and 25,184.

⁸ *W.* is omitted from all the MSS.

⁹ *ceo* is from 25,184 alone.

¹⁰ *asset* is omitted from T. and 16,560.

A.D.
1341-2.
Et nota de
mettre la
parole
 sanz jour.
Idem sil
tendist
daverer qil
nust rienz
par dis-
*cente, &c.*¹

No. 39.

A.D. that by a certain cause which we destroy; judgment.
1341-2. --HILARY. We adjudge that the parol do demur
until your full age.

No. 39.

par descende,¹ et ceo moustrez vous par certeyn cause quele nous destruioms; jugement.—HILL. Nous agardoms² qe la paroule demoerge tanqe vostre age.³

A.D.
1341-2.

¹ The words *par descende* are omitted from 16,560.

² Harl., *ajugeoms*.

³ The pleadings, &c., according to the record, were as follows:—Henry atte Gate and the others plead that William de Chenny, father of the demandant, “*per chartam suam indentatam dedit et concessit eadem tenementa cum pertinentiis quibusdam Johanni de Gate de Arundell et Idania[sic] uxori ejus et ipsi Henrico*” for their lives at an annual rent of 4s., with warranty, and that John and Idania were dead, and Henry prays judgment whether the demandant ought to have action contrary to the deed, of which profit is made. “*Et dicit quod ipse Willelmus filius Willelmi satis habet per descensum hereditarium de eodem Willelmo patre suo in feodo simplici, videlicet, predictum redditum, et quendam alium redditum quinquaginta solidorum per manus predicti Henrici Garland percipiendum, et alia terras et tenementa in predicta villa de Tortington et in Brakelesham,*” &c.

Henry Garland pleads that William the father “*per chartam suam indentatam dedit et concessit ipsi Henrico pratum illud cum pertinentiis*” for life, at an annual rent of 50s., with warranty, and prays judgment in the same manner as Henry atte Gate.

Richard Wyot pleads jointtenancy with John de Fitteshale,

not named in the writ, and makes profit of a deed in support.

The demandant replies as to Richard that he was sole tenant on the day of the purchase of writ, *absque hoc* that Fitteshale had anything, and he is “*paratus verificare; unde petit judicium.*”

Richard rejoins “*quod ipse verificationem predictam absque predicto Johanne de Fitteshale expectare non potest.*”

The Sheriff was therefore commanded to warn (by *Scire facias*) John de Fitteshale to appear “*ad respondendum predicto Willelmo filio Willelmi tam de principali placito quam de exceptione predicta.*”

“*Et sciendum quod eadem charta quasi deducta remanet in custodia Willelmi de Herleston clerici Regis custodienda, &c.*”

“*Et, quo ad predictas chartas per predictos Henricum atte Gate et Henricum Garland superius allegatas, &c., pro eo quod predictus Willelmus filius Willelmi infra etatem est, et non potest aliquod factum antecessoris sui cognoscere nec dedicere, nec ad hujusmodi factum durante minore etate sua respondere, Ideo loquela inde remaneat usque ad etatem,*” &c.

Eventually, as to Richard Wyot, “*idem Willelmus non potest dedicere quin idem Ricardus teneat predictum pratum conjunctim cum predicto Johanne de Fitteshale per predictam chartam, &c. Ideo consideratum est quod idem*

Nos. 40, 41.

A.D.
1341-2.
Dower.
And note
that what
Derworthy
said is
better law.

(40.) § Dower. At the *Petit Cape* the demandant held to the default.—*Rokell*. You have disseised us since the default, and thus have abated your writ.—*Derworthy*. Your plea will be entered, and if you speak truth you will recover by assise, notwithstanding judgment in our favour against you now; and this has been seen in a similar case, for otherwise by such a falsehood every demandant would be delayed; and in this writ of Dower the demandant shall not be delayed.—*HILLARY*. We are annoyed by such contrivances; still you will have nothing from us but the averment.—*Derworthy*. We did not disseise him since the default; ready, &c.—And the other side said the contrary.—*Quære*; because elsewhere, above, in the tenth year, and elsewhere, the contrary appears; but this averment was admitted in the ninth year.

Note.
Caution
that if the
tenant had
been in
Court he
would
have lost
his land;
for that

(41.) § Note that *Gayneford* showed how a tenant had vouched and had sued until the *Sequatur suo periculo* was entered. And a *pluries* writ had issued, and on the day given the writ was returned; and the tenant caused himself to be essoined. And if he had then appeared seisin would have been awarded. And

Nos. 40, 41.

(40.)¹ § Dowere.³ Al petit *Cape* le demandaunt se prist a la defaute.—*Rokell*. Vous nous avez disseisi puis la defaute, issi abatu vostre bref.—*Derworthe*. Vostre plee serra entre, et si vous dites⁴ verite vous recovrez par assise, *non obstante* nostre⁵ jugement vers vous a ore; et ceo ad este vieu en tiel cas, qar autrement par⁶ tiele fauxyne serra chesqun demandant delaie; et en ceo bref de dowere⁷ la demandante ne serra pas delaie.—*HILL*. Il nous peise⁸ de tiels controvieres;⁹ mes vous naverez altre¹⁰ de nous fors que laverement.—*Derworthe*. Nous ne le disseisimes¹¹ pas puy¹² la defaute;¹³ prest, &c.—*Et alii e contra*.—*Quære, quia alibi*,¹⁴ *supra*,¹⁵ *anno x.*, *contrarium videtur, et alibi*; *sed*¹⁶ *ista verificatio anno nono recipitur*.

A.D.
1341-2.
Dowere.
Et nota
cest le
meillour
lay qe
Derworthe
dit.²
[*Fitz.*
Saver de
Defaute,
32.]

41.)¹⁷ § *Nota* qe *Gayn*. moustra coment un tenant qe voucha et qe avoit suy tanqe *Sequatur suo periculo* fuit entre; et *Sicut pluries* issit, a quel jour bref¹⁸ fuit retourne, et le tenant se fist essoner; et sil ust adonques apparu seisine ust este agarde; et ore ad il

Nota.
Cautela
qe si le
tenant ut
este en
Court, il ut
perdu sa
terre; *ideo*

"Ricardus eat inde sine die et
"prædictus Willelmus nihil capiat
"per breve suum sed sit in miseri-
"cordia, &c. Et prædicta charta
"retraditur hic in Curia" to
Richard's attorney.

¹ From T., 16,560, 25,184, and Harl.

² The words in the marginal note subsequent to Dowere are from 25,184 alone. In T. the note is *Petite Cape*.

³ Dowere is not in T.

⁴ 16,560 and 25,184, diez.

⁵ T., vostre.

⁶ 16,560 and Harl., sur.

⁷ The words de dowere are omitted from Harl.

⁸ 25,184, pays.

⁹ T., contreveries; Harl., contreveres. In 16,560 the sentence is only *Ne noz pays*.

¹⁰ 25,184, altre delae.

¹¹ 16,560, disseisoms.

¹² pays is omitted from T. and 16,560.

¹³ The words la defaute are from Harl. alone.

¹⁴ 16,560 and Harl., *aliter*.

¹⁵ *supra* is omitted from T. and 25,184.

¹⁶ *sed* is omitted from 16,560 and Harl.

¹⁷ From T., 16,560, 25,184, and Harl.

¹⁸ All the MSS. except T., nul bref.

No. 42.

A.D.
1341-2.
reason he
kept him-
self at the
inn, and
saved his
land.
Process.
And ob-
serve as to
the essoin
at the
*Sequatur
suo peri-
culo*, by
which the
land was
saved on
the day,
&c.

and now he has a day by the essoin, so that (said *Gayneford*) we pray that the judgment which could not then be given, because he was essoined, may be now given, and we pray seisin.—BASSET. If you had sued a *Pluries* writ against the vouchee you would have had it.—*Gaynford*. That would be in vain, for he has lost the land since he did not sue at the *Sequatur suo periculo*.—BASSET. Take a *Pluries* summons and an *Alias Sequatur suo periculo*; and you shall have nothing else.—Wherefore he did so.—*Quære*, if the vouchee be summoned at another day, whether the land can be saved.

Ward
ship.

(42.) § Wardship, for the Earl of Suffolk, of the body and lands. As to the body, *Rokell* pleaded priority of feoffment; and as to the lands, that he did not hold of the Earl.—HILLARY. That is to the whole; besides, when you pleaded priority you admitted that the ancestor held that land of him, for otherwise a plea of priority could not be pleaded.—*Rokell*. As to the lands we can not deny.—Therefore the Earl recovered, and the damages were remitted, &c.

No. 42.

jour par essone, issi qe le jugement qe³ adonques ne puit estre rendu pur ceo qil fuit essone, nous prioms ore qil soit rendu, et prioms seisine.—BASS. Si vous ussez suy bref vers le vouche *Sicut pluries* vous lusseu eu.—*Gayn.* Ceo serroit⁴ en veyn, qar il ad perdu terre quant il ne suit pas al *Sequatur suo periculo*.—BASS. Pernez vous somons *Sicut pluries* et *Sequatur suo periculo sicut alias*, et altre chose⁵ naverez vous.⁶—Par quei *itu fecit*.—*Quere*, si le vouche soit somons a autre jour si la terre soit⁷ salve.

A.D.
1341-2.
il se tent a
lostel, et
sava sa
terre.¹
Processus.
Et vide de
essone al
Sequatur
suo peri-
culo, par
qui la terre
fut sauve
a la
journe, &c.²
[Fitz.
Voucher,
86.]

(42.)⁸ § Garde, pur le Counte de Suffolk, de corps et de terres.—Quant al corps, *Rokel* pleda priorite de feffement; et quant as terres, il ne tynt pas de luy.—HILL. Cest a tut; ovesqe ceo, quant vous pledastes priorite⁹ vous conissastes¹⁰ qe launcestre¹¹ tynt de luy cele terre, qar autrement plee de priorite ne puit estre plede.—*Rokel*. Quant as terres nous ne poms dedire.—Par quei il recoveri, et les damages relesses, &c.¹²

¹ The words from *Cautela* to terre are from 16,560 alone.

² The words from *Processus* to &c. are from 25,184 alone.

³ qe is not in Harl.

⁴ Harl., serra.

⁵ chose is omitted from T. and 25,184.

⁶ Harl., pas.

⁷ T., serra.

⁸ From T., 16,560, 25,184, and Harl., but compared with the record, *Placita de Banco*, Hilary, 16 Edw. III., R^o. 245.

⁹ 25,184, a priorite.

¹⁰ The words priorite vous conissastes are omitted from Harl.

¹¹ 16,560, lautre.

¹² According to the record, Robert de Ufford, Earl of Suffolk, brought the action against Henry de Walcote "quod reddat e custodiam terræ et heredis Johannis de Ketlebere." The tenure is set out in the count. As to the custody of the land, the tenant cannot in his plea deny that it belongs to the Earl. As to the custody of the body, Henry de Walcote alleges that John, father of the heir, held of Henry, and of those whose estate Henry has, certain tenements "per antiquius feoffamentum quam tennit" certain other tenements of the Earl, and issue was joined on that point. Judgment was given that the Earl should recover "cus-

Nos. 43, 44.

A.D.
1341-2.
Note:
Process
against
witnesses.

(43.) § Note that, where a release to which there were witnesses was denied, in the process made against the inquest the witnesses were omitted, and the parties had a day.—*Pole*, for the tenant, prayed that the process might be viewed and that it might not be amended.—*Thorpe*. We pray process against the witnesses now; for although the parties have gone with their day, still the attorney may for a fortnight afterwards sue his process and his writs.—HILLARY. That is true of a matter which is warranted by the roll, but process can not now be made in accordance with the roll, for the witnesses are omitted.—*Thorpe*. Then there is nothing more; but what can not now be done shall be done at another time, for process will never be discontinued by default of process against the inquest or witnesses when it is well continued between the parties; wherefore, at the worst, there is only a delay in the return and in commencing suit against them.—HILLARY. That is true, and you shall say so at your day.

Process in
the Chan-
cery to
have cer-
tain lands,
by reason
of ward-
ship, out of
the King's
hand, not-
withstand-
ing that
another
Inquest

(44.) § The Archbishop of Canterbury sued in the Chancery, after the death of Nicholas Menylle his tenant, to have out of the King's hand the lands of Nicholas, by reason of wardship. And in respect of those lands the inquest taken on a *Diem clausit extremum* in the county of York was returned; and it purported that Nicholas held nothing of the King in the said county except an assart, and that he held Whorlton, &c. of the Archbishop by knight-service.—PARNING (CHANCELLOR). A writ has issued to the Sheriff of Northumberland, which is not returned, and it cannot

"todiam terræ." The verdict at *Nisi prius* on the issue was that the father held certain tenements of the Earl "per antiquius feoffamentum" than that by which the father held the other tenements of Henry, that Thomas the heir was 19 years of

age, and was married by the said Henry to Felicia, daughter of the said Henry, when he was 15 years of age. Damages 120 marks. Judgment was given for the Earl to recover the damages, and Henry was in mercy.

Nos. 43, 44.

(43.)¹ § *Nota* qe, ou relees fuit dedit en quel tesmoignes sount, en le proces fait vers lenqueste les tesmoignes furent entrelesses, et les parties ount jour.—*Pole*, pur le tenant, pria qe le proces fuit vieu et qil ne fuit pas amende.—*Thorpe*. Nous prioms proces vers les tesmoignes a ore; qar² tut soient⁴ les parties ales ove lour⁵ jour, unquore puit lattourne une xv⁶.⁶ apres suir soun proces et ses⁷ brefs.—*HILL*. Cest verite de chose qest garrantie par roule, mes par roule ne puit proces ore estre fait, qar ils sount entrelesses.—*Thorpe*. Donques ny ad pluis; mes ceo qe ne puit estre⁸ ore serra altrefoitiz fait, qar proces serra jammes discontinue par defaute de proces vers enqueste ou tesmoignes quant il est continue bien entre les parties; par quei, a pis, il ny ad forsqe une delay de retourner et comencer suyte vers eux.—*HILL*. Cest verite, et ceo dirrez vous a vostre jour.

A.D.
1341-2.
Nota:
Proces
vers tes-
moignes.²
[Fitz.
Proses,
166.]

(44.)⁹ § Levesqe de Caunterbirs suit en Chauncellerie, apres la mort Nichole Menylle soun tenant, daver les terres Nichole, par resoun de garde, hors de la mayn le Roi, et dount lenquest fuit retourne sur *Diem clausit extremum* pris en le counte Deverwyke,¹⁰ qe voleit qil tynt riens du Roi el dit counte sauf un assart, et qil tynt del Ercevesqe¹¹ Whorletone,¹² &c. par service de chivalere.¹³—*PARN. (CHAUNCELIER)*.¹⁴ Bref est issi al Vicounte de Northumberland, quele nest pas retourne, quest fut

Proces en
la Chaun-
cellerie
davoir
certaines
terres, par
resoun de
garde, hors
de la mayn
le Roy,
non ob-
stante qun
altre en-
quest fut

¹ From T., 16,560, 25,184, and Harl.

² The words *Proces vers temoignes* are from 16,560 alone.

³ Harl., quant.

⁴ Harl., vient.

⁵ Harl., le.

⁶ xv⁶ in 25,184 alone; the other MSS., xv.

⁷ T. and 25,184, ces.

⁸ estre is from T. alone.

⁹ From T., 16,560, 25,184, and Harl.,

¹⁰ T., de E.

¹¹ Harl., Erchevesqe.

¹² 25,184, Horletone.

¹³ 25,184, chivalerie.

¹⁴ Chauncelier is from T. alone.

No. 44.

A.D.
1841-2.
was yet to
be re-
turned,
which per-
chance
might pass
for the
King.

be known what may be found for the King by that inquest.—*Pole*. At common law, before the King had the prerogative which was granted by the community to the King¹ in the time of his father, every one had the wardship of the lands which were holden of him, and the King had only the wardship of the land which was holden of himself; and although it be granted to the King by the Statute *Prærogativa Regis*¹ to have the wardship of all lands, of whomsoever they are holden, in case any of the lands be holden of him by knight-service, *ut de corona*, the fees of the Archbishop are excepted in the same Statute *Prærogativa Regis*; ¹ so he is at the common law; wherefore nothing which may be found for the King by the other inquest can be an impediment such that these lands should not be delivered to the Archbishop.—*PARNING*. We can not execute the office or the livery by parcels; and in the case of dower and partition in this Court nothing is ever done until all the inquests are returned, and it is not yet known according to what law the wardship is to be delivered to you, whether because the ancestor did not hold anything of the King in chivalry, in which case the King will only withdraw his hand, or because, although he held other lands of the King by knight-service, livery should be made to you as a person exempted in the Statute *Prærogativa Regis*; ¹ and you will be nothing the worse, for you will have the wardship with the issues if you are right.—*Pole*. At least

¹ 17 Edward II., St. 1.

No. 44.

et homme ne sciet² pas³ ceo⁴ qe purra estre trove pur le Roi par cele enqueste.—*Pole.* A la comune ley, devant qe le Roi avoit prerogative quele fuit graunte par la comune au Roi en temps le pere,⁵ chesqun homme avoit garde des terres qe furent tenuz de luy, et le Roi navoit forsque ceo qe fuit tenuz de luy; et coment qe par la prerogative soit graunte au Roi davoit totes les terres, de qi qe eles soient tenuz, en cas qe asquns terres soient tenus de luy par service de chivalere, come [de] la Coroune,⁶ en mesme la prerogative les fees lercevesqe⁷ [sount forpris; issint est il a la comune ley; par quei rien qe purra estre trove par laltre enqueste pur le Roi, ne puit estre areste⁸ qe cestes terres ne serrount liveres al Ercevesqe].⁹—*PARN.* Nous ne poms pas faire loffice par parcelles ne la livre; et en cas de dower et purpartie ceinz homme fait jammes riens tanqe totes les enquestes soient retournes, et homme ne sciet¹⁰ unquore par quele ley¹¹ liverer a vous¹² la¹³ garde, ou pur ceo qe launcestre¹⁴ ne tynt riens en chivalrie du Roi,¹⁵ en quel cas le Roi ne fra forsque ouster la mayn, ou pur ceo qe,¹⁶ tut tynt il du Roi par service de chivalere altres terres, la livre se freit a vous come a persone exempte en la prerogative; et riens vous deperira, qar vous averes la garde [ove les issues si vous eiez resoun.—*Pole.* A tut le¹⁷ meyns nule

A.D.
1841-2.
unquore a
retourner,
qe pur cas
purra pas-
ser pur le
Roi.¹
[Fitz.
Livre,
29.]

¹ The marginal note, as printed, is from 25,184 alone. In T. it is Sute par petition; in 16,560 and Harl., *Diem clausit extremum*.

² T., seet; 16,560 and Harl., set.

³ pas is from 25,184 alone.

⁴ ceo is not in T.

⁵ All the MSS., laiel.

⁶ The words come la Coroune are from Harl. alone.

⁷ Harl., Lerchevesqe.

⁸ 25,184, arestu.

⁹ The words between brackets are not in Harl.

¹⁰ T., seet; 16,560, seit; Harl., voet.

¹¹ Harl., cause.

¹² T., luy liverer, instead of liverer a vous.

¹³ 25,184, luy.

¹⁴ 16,560, lautre.

¹⁵ The words du Roy are omitted from 25,184.

¹⁶ qe is not in Harl.

¹⁷ 25,184, les.

No. 45.

A.D.
1341-2.

no impediment can be supposed by reason whereof the Archbishop shall not have the wardship of the lands; but as to the body of the heir, perhaps an obstacle may be found; and therefore we demand only that which is clear, &c.—PARNING. We will not make the livery by parcels; and suppose that this seignory was purchased since the Statute *Prærogativa Regis*¹ by the Archbishop, as may be pleaded when the time comes, the exemption will not hold good.—And then the Archbishop shewed how his predecessor St. Edmund had, in a like case, restitution by award of the King's Council, and how others of his predecessors since had wardships out of the King's hand, and how his predecessors had always been seised, except in time of absence from England, or vacancy of the see, or when the King occupied, at which time his predecessors had, by award, restitution out of the hands of the kings together with the issues; and if the King wishes to be aided by the Statute *Prærogativa Regis*,¹ then we are exempt.—PARNING. By which do you wish to be aided—by the Statute *Prærogativa Regis*,¹ by which exemption is made of you, or by prescription?—Pole. By both.—PARNING. Although you have not a right, such as the law requires, shown on your behalf, nevertheless the king is pleased that you should have restitution, &c.—And the Archbishop will have it together with the issues.

Entry
Ad terminum qui præterit,

(45.) § *Ad terminum qui præterit* for the heir, on the seisin of his ancestor, where bastardy was alleged against him, and he replied that he was *mulier*; where-

¹ 17 Edward II., St. 1.

No. 45.

arreste poet estre suppose qe lercevesqe navera la garde]¹ des terres; mes en dreit del corps² leir par cas obstacle purra estre trove; et pur ceo nous demandoms³ pas mes ceo qest cler, &c.—PARN. Nous ne le ferroms pas par⁴ parcelles la livre; et jeo pose qe ceste seigneurie soit purchace puis la prerogative par lercevesqe, come purra estre plede quant temps vendra, lexempcion ne tendra pas lieu.⁵—Et puis⁶ lercevesqe moustra coment Seint Edmund soun predecessour, par agarde du Counsail le Roi, avoit restitution en autiel cas, et altres ces predecessours puis avoint gardes hors de la mayn le Roi, qe ses predecessours de tut temps furent seisis forsque en temps dexil, ou de voidaunce, ou quant le Roi occupa, a quel temps, par agarde, ces predecessours avoient restitution hors des mayns des rois *cum⁷ exitibus*; et si le Roi voille estre eide par prerogative, la sumes nous exempt.—PARN. Quele voillez vous estre eide—par statut de prerogative, par quele exempcion de vous est fait, ou par prescripcion?—*Pole*. Par lun et lautre.—PARN. Coment qe vous naves pas dreit, si avant come ley demande mustre pur vous,⁸ ne purquant il plect au Roi qe vous eiez restitution, &c.—*Et habebit cum exitibus*.

A.D.
1341-2.

(45.)⁹ § Entre *ad terminum qui præterit* pur leir, de la seisine soun auncestre, ou bastardie fuit allege countre luy, el il replia qe muliere; sur quei bref issit

Entre¹⁰
ad terminum qui præterit,¹¹

¹ The words between brackets are not in Harl.

² Harl., temps.

³ Harl., demandes; T., le demandoms.

⁴ par is from 16,560 alone.

⁵ The report ends here in 16,560 and Harl.

⁶ 25,184, quant.

⁷ 25,184, com.

⁸ T., &c., instead of mustre pur vous.

⁹ From T., L., 16,560, 25,184, and Harl.

¹⁰ Entre is from 16,560 alone.

¹¹ The words *ad terminum qui præterit* are not in 16,560.

No. 45.

A.D.
1341-2.
brought
by one as
heir. Bas-
tardy was
alleged,
and it was
certified by
the Bishop
that the
demandant
was *mulier*,
wherefore
Re-sum-
mons
issued, and
then after-
wards
Grand
Cape.

upon a writ issued to the Bishop, who certified that he was *mulier*; wherefore a Resummons issued against the tenant. The Resummons being now testified, the tenant made default.—*W. Thorpe*, for the demandant, prayed seisin of the land, because his action is tried, and the tenant has a day only to hear his judgment.—*HILLARY*. Perchance the Sheriff has falsely testified the summons, and if the tenant were now here he would produce a release of later date.—*Thorpe*. He would never do so after action of the party has been tried, any more than where an inquest has passed for the demandant at *Nisi Prius* in the country, or in the Bench, where the tenant would not afterwards produce a release in bar; but if he have such a release that will aid him to have an assise if the other oust him by execution of the judgment; so also in this behalf; and if you award a *Cape* now, at another day he will make his law of non-summons and will abate our writ, when the action has been tried; and if he do not come at another day and we recover by default, he will defeat our judgment by a writ of Deceit, which is not reasonable.—*HILLARY*. After the mise in a Grand Assise, if the parol be without day, and afterwards at the Resummons the tenant make default, the Grand *Cape* will issue.—*Thorpe*. The action is not tried in that case. And suppose that it were in a case of Dower that the writ was sent to the Bishop, in which case the parol

No. 45.

al Evesqe qe certiffa qil est² muliere;³ par quei A.D. 1341-2.
 resomons issit vers le tenant. La resomons ore par une come heir.
 tesmoigne, le tenant fist defaute.—*W. Thorpe*,⁴ pur le Bastardie
 demandant, pria seisine de terre,⁵ qar saccion est fuit allege,
 trie, et le tenant nad jour forsqe doier soun jugement. et certiffe
 —*HILL*. Par cas le Vicounte ad tesmoigne fausement par levesqe
 la somons, et si le tenant fuit ore⁶ ycy il mettereit qil fuit
 avant relees⁷ de puisne⁸ date.—*Thorpe*. Noun freit muliera,
 james apres accion de partie trie, nyent puis qe la ou par quei
 enqueste ad⁹ passe pur le demandant par *Nisi prius* Resomons
 en pais,¹⁰ ou Baunk,¹¹ le tenant apres ne mettra pas issit, et
 avant relees en barre; mes sil eit tiel relees ceo pus apres
 luy eidra¹² davoit assise si lautre luy ouste par Grand
 execucion del jugement;¹³ auxi de ceste part; et si Cape.¹
 vous agardes¹⁴ *Cape* a ore, a un altre jour il ferra sa
 ley de noun somons et abatra nostre bref la¹⁵ ou laccion
 est trie; ou sil ne veigne a un altre jour et nous
 recoveroms par defaute, il defra no tre jugement par
 bref de desceite, qe nest pas resoun.—*HILL*. Apres
 mise de Graunt Assise, si la paroule soit saunz jour, et
 puis al resumons le tenant¹⁶ fait defaute, graunt *Cape*
 issera.—*Thorpe*. Laccion nest pas trie la. Et mettes
 qe ceo fuit en cas de dowere qe bref soit maunde
 al Evesqe, en quele cas la paroule serra continue, come

¹ The words in the marginal note subsequent to *prateriit* are from 25,184 alone, but there is a similar, though shorter note in Harl.

² L., fut.

³ 16,560, bastard.

⁴ T. and 25,184, *Dereworthy*, instead of *W. Thorpe*.

⁵ The words *de terre* are omitted from T., 16,560, and Harl.

⁶ ore is omitted from T., L., and 25,184.

⁷ T., acquittance.

⁸ L., pugne.

⁹ L. est.

¹⁰ The words *prius en pais* are omitted from L.

¹¹ The words ou Baunk are omitted from Harl.

¹² The words ceo luy eidra are omitted from L.

¹³ The words *de jugement* are omitted from L.

¹⁴ Harl., *ajugges*.

¹⁵ la is from L. alone.

¹⁶ All the MSS., except L., le tenant resomons, instead of al resumons le tenant.

No. 45.

A.D.
1341-2.

would be continued, as reasonably it should in all other cases, even though the contrary may be the practice, and the Bishop certified for the demandant, and the tenant made default, seisin would be immediately awarded.—HILLARY. In that case the parol is continued, and that is the cause.—*Thorpe*. You have seen before *HERLE* that on a writ of Ravishment of Ward, where the plaintiff's action was tried, and he died before judgment, and his executors had a Resummons by Statute¹ against the defendant who made default, it was adjudged that they should recover; and process was not made on the default, because the action was tried; and so we pray here.—And afterwards *SCHARSHULLE* came into the Bench and said that he had seen the *Grand Cape* issue in such a case; therefore *HILLARY* awarded the *Grand Cape*.—*WILLOUGHBY* said it was erroneous.—Therefore *Quære*.²

¹ 13 Edw. I. (Westm. 2), c. 35.

² There occurs in four of the MSS. (T., L., 16,560, and Harl.), under the head of Hilary Term, 16 Edward III., a report of the case already printed as No. 15 of Easter Term, 15 Edward III. As far as the speech of *Thorpe*, beginning on the fourth line from the bottom of p. 47 in the report as printed, the report of H., 16 E. III., is an abridgment.

From the commencement of that speech to the words "*Gayn. pria qe son plee fut entre*," 15 lines from the bottom of p. 51 in the report as printed, the report of H., 16 E. III., is the same in form, and without material variations, and it ends with the word "*entre*" above quoted. There seems, therefore, to be no necessity to reproduce the case here.

No. 45.

par resoun¹ serroit en touz altres cas, tut soit le revers use, et levesqe certifiast pur le demandante, et le tenant fist² defaute, seisine serroit³ agarde tauntost. —HILL. La est la paroule continue, *et illa est causa*.⁴ —Thorpe. Vous veistes⁵ [devant HERLE qe⁶ en ravisement de garde, la⁷ ou laccion le pleintif fuit trie, et avant jugement il morust, et ses executours avoint]⁸ resomons par lestatut vers le defendant qe fit defaute, et fuit agarde qils recoverassent; et proces ne fuit pas fait sur la defaute pur ceo qe laccion fuit trie; et auxi prioms nous⁹ icy.¹⁰ — Et puis SCHAR. vynt en Baunk et dit qil ad¹¹ view graunt *Cape* en ceo cas; par quei HILL. agarda le graunt *Cape*. —WILBY. *dixit quod erratum est*.¹² —*Quære ergo*.¹³

A.D.
1341-2.

¹ L., resumons; Harl., resomons.

² L. and 25,184, fait; Harl., fet.

³ L., serra.

⁴ L., cest le cas, instead of *illa est causa*.

⁵ Harl., veets.

⁶ 16,560, *Pole*, instead of "*Thorpe*. Vous veistes devant HERLE qe."

⁷ la is from L. alone.

⁸ The words between brackets are not in Harl.

⁹ nous is from T. alone.

¹⁰ icy is omitted from T.

¹¹ L., navoit.

¹² This sentence is omitted from L., 16,560, and Harl.

¹³ The words *Quære ergo* are from 25,184 alone.

EASTER TERM
IN THE
SIXTEENTH YEAR OF THE REIGN OF
KING EDWARD THE THIRD
AFTER THE CONQUEST.

EASTER TERM IN THE SIXTEENTH YEAR OF
THE REIGN OF KING EDWARD THE THIRD
AFTER THE CONQUEST, BEFORE HILLARY
AND KELSHULLE, &c.

No. 1.

A.D. 1342. (1.) *Quid juris clamat* was sued for the Earl of Salisbury against the Prior of Hurley and one A. in common, upon a note of a fine, by which it was supposed that the Prior held for the life of A. The Prior came, and A. did not come.—*R. Thorpe*. The Prior is caused to come by this *Quid juris clamat*, by which his tenancy is supposed to be with another who does not come; wherefore without the latter we ought not to be put to claim.—*HILLARY*. If you will say that you hold jointly with A., then there is cause for staying proceedings, so that you shall not claim

Quid juris clamat against a Prior upon the note of a fine, by which it was supposed that the Prior held the tenements for the life of one A.; and the writ was sued against the two in common. And, because the writ was not in accordance with the note, the writ abated.

DE TERMINO PASCHÆ¹ ANNO REGNI REGIS
EDWARDI TERTII A CONQUESTU SEXTO
DECIMO, CORAM HILLARY ET KELSILLE,
&c.²

No. 1.

(1.)³ § *Quid juris clamat* suy pur le Counte de Salesbury⁵ vers le Priour de Hurley⁶ et un A.⁷ en comune, hors dune note, par quele fut suppose⁸ qe le Priour tynt a la vie A.⁹ Le Priour vynt,¹⁰ et A. ne vynt pas.—*R. Thorpe*.¹¹ Le Priour est fait venir par ceo¹² *Quid juris clamat*,¹³ par quele est suppose sa tenance ove altre qe ne vynt pas; pur quei¹⁴ saunz luy nous¹⁵ ne devoms estre mis de¹⁶ clamer.¹⁷—*HILL*. Si vous voillez dire qe vous tenez joynt¹⁸ ove A., donques il y ad cause darester qe vous soul ne clamerez

A.D. 1849.
Quid juris clamat
vers un Priour hors de un note, par quel fut suppose qe le Priour tint lez tenements a la vie un A.; et le bref sui en comune vers les ij. Et, pur ceo qe le bref disacorda al note, le bref abati.⁴ [Fitz. *Quid juris clamat*, 21.]

¹ The reports of this Term are from the Temple MS., the Lincoln's Inn MS., the Additional MSS. in the British Museum, numbered respectively 16,560 and 25,184, and the Harleian MS. No. 741.

² The words CORAM HILLARY ET KELSILLE, &c., are from L. alone.

³ From T., L., 16,560, 25,184, and Harl.

⁴ The marginal note, except the words *Quid juris clamat*, common to all, is from Harl. alone. In 25,184 the words following *Quid juris clamat* are porte vers ij en comune; et la note supposa qe lun soul tynt a la vie lautre, par quei le tenant ala quit, qar bref desacorda de la note. In L. some words have been added after *Quid juris clamat* in a later hand, which

have been partly cut away in binding.

⁵ 16,560, Sarum.

⁶ T. and Harl., Thurley; L., Thourleye.

⁷ 16,560, Richard.

⁸ 16,560, quele note voleit, instead of par quele fut suppose.

⁹ 16,560, R.

¹⁰ Harl., veient.

¹¹ 25,184, Par quei, instead of *R. Thorpe*.

¹² L., le.

¹³ *clamat* is not in Harl.

¹⁴ Harl., qoi.

¹⁵ nous is omitted from all the MSS. but 16,560 and Harl.

¹⁶ 25,184, pur.

¹⁷ L., a desclamer, instead of de clamer.

¹⁸ L., tout; 25,184, yoint.

No. 1.

A.D. 1342. alone, for that is contrary to the note; but, for anything that you yet say, you alone are tenant and ought to attorn, and the note supposes that; and the form in this Court, when one holds for the life of another, is to cause both to come; and therefore answer, if you will.—*R. Thorpe*. This writ would be warranted by a note by which a joint tenancy was supposed in both, and not by such a note as this, which supposes that one holds for the life of the other; and so this writ is not warranted by this note; but we take for exception that until A. come we shall not be put to claim.—*W. Thorpe*. This is not an original writ on which plea is to be held, for you will claim on the note, and not on an original writ; judgment, since you are in Court, and your sole tenancy is supposed by the note, which you do not deny; and, perchance, both writs would be good enough.—*HILLARY*. The writ which supposed his sole tenancy would be more reasonable; and I was in a like case between Henry del Ylle and John del Ylle and K. his wife, and I could not compel one to claim until the other came; wherefore I took suit against one alone.—*R. Thorpe*. At one time the fine in such a case was in a form supposing the tenancy of both for the life of one, and then such a writ as this was used; but

No. 1.

pas, qar¹ ceo est² a contrarie³ de la note; mes, pur A.D. 1342. rien qe vous dites unquore, vous soul estes tenant et devez attourner, et ceo suppose la note; et la fourme de ceinz est tiel, quant un tient a la vie un altre, de faire lun et⁴ lautre venir; et⁵ pur ceo responez si⁶ vous voillez.—*R. Thorpe*. Ceo bref serroit garranti⁷ dune note par quele fuit suppose joynenance en⁸ lun et lautre, et noun pas de tiele note supposant qe lun tient⁹ a la vie laltre, et issint¹⁰ ceo bref nest pas garrantie de ceste note; mes nous pernom¹¹ pur challenge qe taunt qe A.¹² vigne¹³ nous ne serroms pas mys de clamer.—*W. Thorpe*. Ceo nest pas bref original sur quel plee serra tenu, qar sur la note vous clameres, et noun pas sur le bref original; ¹⁴ jugement, del houre qe vous estes en Court, et par la note est vostre soule tenance suppose, quele vous ne dedites pas; et par cas lun et lautre bref serroient assez bon.—*HILL*. Le bref qe supposereit sa soule tenance serroit pluis resonable; et jeo¹⁵ fu¹⁶ en tiel cas entre Henri del Ylle¹⁷ et Johan del Ylle et K.¹⁸ sa femme, et ne poay¹⁹ chacer lun a clamer tanqe lautre vynt; par quei jeo pris la suite vers lun soul.²⁰—*R. Thorpe*. En asqun temps la fyne en tiele²¹ cas fuit supposant la tenance lun et lautre a la vie lun, et donques usa homme²² tiel bref; mes

¹ qar is not in 25,184.² All the MSS. except 16,560, cest, instead of ceo est.³ T. and L., contraire.⁴ The words lun et are omitted from Harl.⁵ et is not in 25,184.⁶ 25,184, ditz qe, instead of responez si.⁷ Harl., garante.⁸ L. and Harl., a.⁹ T., tigne.¹⁰ Harl., si.¹¹ pernom¹¹ is not in Harl.¹² T., ne; L., al; 16,560, R.¹³ 16,560, viegne.¹⁴ original is not in L.¹⁵ Harl., je, and so generally throughout the reports of the Term.¹⁶ 25,184, fui.¹⁷ L., de Yle; T., del Idle; Harl., del Hille, instead of del Ylle.¹⁸ K. is from L. alone.¹⁹ L., purra.²⁰ Harl., soul vers lun, instead of la suite vers lun soul.²¹ tiel is not in L.²² T., ust homme eu, instead of usa homme.

Nos. 1, 2.

A.D. 1342. since a fine in accordance with the tenancy is now used, the writ should be altered accordingly, &c.—HILLARY. No answer is needed to [your exception] on this writ, and process is not to be made on this writ, but upon the note.—And afterwards HILLARY, having changed his opinion, said to the plaintiff that he should sue another writ, for (said HILLARY) this writ is not warranted by the note, &c.

Debt,
against a
Sheriff, on
a Statute
Merchant.
And note
that the
plaintiff
recovered
damages
by judg-
ment, not-
withstand-
ing the
Statute.¹

(2.) Debt was brought, by statute, against John Lacy, Sheriff of Cambridge, for that he permitted Roger de Wygenhale, of Hinton, who had been taken on a Statute Merchant, to go at large. The Sheriff came by *Pone per vadium*, and could not deny the debt.—*Thorpe*. We pray our damages.—HILLARY. By what law? For the Statute¹ gives to you only that the Sheriff shall answer for the debt, or for the body of the debtor, and does not give you damages; and if the party himself were to tender you the money in which he is bound, here in Court, you would not have damages; and if the Sheriff were commanded to deliver to you lands and chattels, and the chattels were sufficient for the debt, you would not have damages; for by Statute you will have expenses and costs only where the lands are to be delivered to you.—*Thorpe*. In all cases in which anyone recovers by a writ of

¹ 13 Ed. I. Stat. 3 (*De Mercatoribus*).

Nos. 1, 2.

puis qe homme use la fyne ore accordaunt¹ a la tenance, A.D. 1342.
le bref serroit chaunge accordement,² &c.—HILL.
Respons ne vous faut pas³ sour ceo bref, et proces
nest pas a faire sour ceo bref, mes sour la note.—Et
puis HILL., *mutata opinione*, dit al pleintif qil suereit⁴ *Judicium*.⁵
altre bref, qar ceo bref nest pas garrantie de la note, &c.

(2.)⁶ § Dette porte par statut vers Johan Lacy, Dette, vers
Vicounte⁸ de Cauntebrigge, qe suffrit Roger de Wy- Vicounte,
genhale de Hynton,⁹ qe fuit pris par statut marchaunt, sur Statut
aler a large. Le Vicounte vynt par *Pone per vadium*, Marchant.
el ne pout dedire la Dette.¹⁰—*Thorpe*. Nous prioms *Et nota*, il
nos damages.—HILL. Par quele ley? Qar¹¹ statut vous recoveri
dounne fors qe le Vicounte respoundra de la dette, ou damages,
del corps, et vous dounne pas damages; et si la partie par agarde,
mesme vous tendist les deners en quex il est oblige *non ob-*
en la Court cy, vous naverez pas damages; et si *stante*
comande fuit al Vicounte de liverer a vous terres et *Statuto*?
chateux, et les chateux fuissent sufficeauntz a la dette, [Fitz.
vous naverez pas damages; qar par statut vous naveres *Damage*,
pas myses et coustages mes ou les terres vous serront 81.]
liveres.—*Thorpe*. En touz¹² cas ou homme recovere

¹ L., acorde.

² L., serra acordant; 16,560, serroit a la fyn accordaunt; Harl., serroit ore accordaunt, instead of serroit chaunge accordement.

³ L., fait, instead of faut pas.

⁴ T., suyt; L., suyte; 25,184, suist; Harl., ne soesit, instead of suereit.

⁵ *Judicium*, in the margin, is from 16,560 alone.

⁶ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita, de Banco*, Easter, 16 Edw. III., R^o. 33, d. It there appears that the action was brought by Laurence de Halywelle, citizen

and grocer (*Piperarius*) of London, against John de Lacy, knight, late Sheriff of the county of Cambridge.

⁷ The marginal note subsequent to the word Dette is from 25,184 alone. In Harl., the marginal note is Dette vers Vicounte, qe suffrit le dettour aler a large. Et recoveri damages. In L. there is a similar note.

⁸ T. and 16,560, Viscounte, and so frequently.

⁹ The name is from the record. T., un; the other MSS. of Y.B., S.

¹⁰ T., Depte.

¹¹ qar is from L. alone.

¹² touz is not in L.

No. 3.

A.D. 1342. Debt he shall receive damages ; and in a case like to this it was heretofore so adjudged ; and particularly it should be so where the defendant takes delays, and does not come on the first day.—HILLARY. Heretofore damages were awarded in like case by those who were more learned than we are ; wherefore the COURT adjudges that you do recover the debt, and your damages taxed by the COURT at 100s.

Judgment. (3.) Attachment on Prohibition of a plea prosecuted in respect of a lay fee. The letter of the Archbishop of Canterbury was produced against the plaintiff, to the effect that he was excommunicated.—*Gayneford*. We tell you that against that process in Court Christian we made appeals and provocations to the Court of Rome, where the Pope made his Judges Delegate, who heard the cause before them, and adjudged that sentence to be tortious, and annulled it, and revoked it ; and see here their letters patent testifying the fact ; and thus we are able to be answered.—HILLARY. We have it by the Archbishop's letter, which is of record in the case, that you are

Attachment on Prohibition, where the seal of the Judge Delegate of the Pope could not annul the excommunication proved by the Metropolitan.

No. 3.

par bref de dette¹ il recevra damages²; et en autiel cas altrefoitz fuit agarde; et nomenent ou le defendant prent delaies, et ne vient pas³ al primer jour. —HILL. Devant⁴ ces hures furent damages agardes en autiel cas par pluis sages qe nous sumes; par quei agarde la COURT qe vous recovrez la⁵ dette, et vos damages taxes par la COURT a Cs.⁶

(3.)⁷ § Attachement sur Prohibicion de plee suy *Judicium*.⁸ de lay fee. La lettre¹⁰ Lercevesqe de Caunterbirs fuit mys avant countre le pleintif, qil fut¹¹ escomenge.¹²—Gayn. Nous vous dicms qe countre cel proces en Court Christiene si feymes appeus¹³ et provocacions a la Court de Rome, ou lapostole¹⁴ fist¹⁵ ces juges delegatz,¹⁶ les queux oierunt¹⁷ la cause devant¹⁸ eux, et¹⁹ ajugerent cele sentence com torcenouse, et lanienterent et la repellerent;²⁰ et veiez cy lour lettre²¹ patente qe le tesmoigne; et issi sumes nous responsablez.—HILL. Nous avoms par lettre²¹ Lercevesqe, qest de recorde en le cas, qe vous estes

¹ 16,560, descetee.

² 25,184, de damages.

³ T., mye.

⁴ T., avant.

⁵ L., vostre.

⁶ L., &c., instead of a Cs. According to the record the damages were laid at £10, and the plaintiff recovered "damna sua, quastaxantur per Justiciarios ad centum solidos."

⁷ From T., L., 16,560, 25,184, and Harl.

⁸ The word *Judicium* is from L. alone.

⁹ The words in the marginal note subsequent to Prohibicion are from 25,184 alone.

¹⁰ 25,184, chartre; Harl., bref.

¹¹ T., 16,560, 25,184, and Harl., est.

¹² L., eschomenge; Harl., escumunge.

¹³ T., appelle; 25,184 appeus.

¹⁴ 25,184, le apostolle; T., lappostoille; L., lapostoille.

¹⁵ L., fut.

¹⁶ T., des legats; 25,184 and Harl., de legats.

¹⁷ T. and Harl., oy; 16,560, cy; Harl., et oy.

¹⁸ T. avant.

¹⁹ et is from L. alone.

²⁰ The words ajugerent cele sentence com torcenouse, et lanienterent et la repellerent, are from L. In the other MSS. the passage is anienterent cele sentence come torcenouse [T., torcious] et repellerent.

²¹ Harl., bref.

Attache-
ment sur
Prohibi-
cion, ou le
seal du
juge dele-
gatz le
Pape ne
pout mye
anienter
lescom-
engagement
prove par
le Metro-
politan.⁹

No. 4.

A.D. 1342. excommunicated, and the seal of the Delegates is not authenticated so that we ought to give credit to it,¹ and so we are not certified that you are absolved: wherefore let the parol demur.

Quare impedit for the King in respect of a vicarage. And observe that the Ordinary of the place could not claim anything in that vicarage—neither nomination nor presentation

(4.) *Quare impedit* for the King against the Bishop of Norwich, in respect of the vicarage of the church of Stoke-by-Nayland, by reason that the Priory of Prittlewell was in his hand because of the war, &c., and the Bishop alleged that the King had brought against him a *Quare non admisit*, supposing that he had nothing in the patronage, and by this writ the King supposes that he can claim in respect of the advowson; judgment of the writ.—This exception was not allowed.—*Pole*. We tell you that long ago a composition was made between the Bishop's predecessor and the Prior's predecessor, on the appropriation of the church, to the effect that the Bishop and his successors should, on every vacancy of the vicarage, nominate to

¹ As to the jurisdiction of Judges Delegate, see Bract. 412, 426 b, 427.

No. 4.

escomenge, et le seal¹ de les delegatez² nest pas A.D. 1342. autentik a quei nous devoms doner foi, issi ne sumes pas acerte³ qe vous estes assoutz; par quei demoerge la paroule.⁴

(4.)⁵ § *Quare impedit* pur le Roi vers Levesqe de Norwich,⁶ de la vicare del eglise de Stokeneland,⁷ par cause de la Priorie⁸ de Pritewelle⁹ en sa mayn par cause de la guerre, &c., qe alleggea qe le Roi avoit porte vers luy *Quare non admittit*, supposant qil navoit rien en lavowere,¹⁰ et par ceo bref suppose qil purra clamer en lavowesoun; jugement du bref.—*Non allocatur.*—*Pole.* Nous vous dioms qe dauncien temps composicion se prist entre le predecessour Levesqe et le predecessour le Priour, sur lappropriacion del eglise, qe Levesqe et ces successeurs, a chesquene voidaunce de la vicare, nomereint¹¹ al Priour

Quare impedit pur le Roi dune vikarie. Et vide qe Lordiner du lieu ne poait riens clamer en cele vikarie, ne denomination, ne presentement a

¹ L., les seals, instead of le seal.

² T. and Harl., de les legats; 25,184, de la delegate; L., des les legates, instead of de les delegatez.

³ T. and L., asserte.

⁴ The case is probably that which appears among the *Placita de Banco*, Easter, 16 Edw. III., B^o. 64, d. Richard de Rothynge, and Henry Moncoy, of London, Fishmonger, sued Attachment on Prohibition against William de Cotun and Rose his wife for prosecuting a plea touching lay fee in Court Christian. William and Rose said that Richard and Henry ought not to be answered because they were excommunicated, and the letters of the Archbishop of Canterbury were produced. Nothing appears directly as to the Appeal to Rome, but judgment was given thus:—"Et Ricardus et Henricus nihil

" ostendunt per quod liqueri potest " Curia, &c., quod ipsi sunt absoluti. Ideo loquela illa remaneat " sine die quousque, &c."

⁵ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edw. III., B^o. 80. It there appears that the action was brought by the King against the Bishop of Norwich, in respect of the vicarage of the church of "Stoke atte Neylond" or Stoke-by-Nayland (Suffolk).

⁶ T. and 25,184, Norwicz; L., Northwych; Harl., Nortwik.

⁷ L., S.

⁸ L. and 16,560, priorite.

⁹ T., P.; 16,560 and 25,184, Pritewelle; Harl., Petrewelle; L., Petrewille.

¹⁰ Harl., la voierie.

¹¹ T. and 25,184, numeront; L. and 16,560, nomereint.

No. 4.

A.D. 1842. the Prior and his successors a clerk, whom the Prior should present to the vicarage; and that if the Prior did not do so, the Bishop and his successors should confer the vicarage; and our predecessor, the Bishop, &c., nominated to the Prior's predecessor him by whose death the vicarage is vacant, and he was presented by the Prior, and admitted, and instituted; and our predecessors always previously so nominated the other vicars; wherefore we came to the present Prior, and nominated to him our clerk, A., &c., and, after the King had seized, we nominated that same A. to the Chancellor, as lieutenant of the King, and we are still ready to nominate him to the King; judgment, since the King claims the estate of the Prior, and we have nominated to the King, whether he can assign any tort in our person; and, in case he will not present, it belongs to us so to do.—*Thorpe*. And we demand judgment, since you have admitted that the King is seised of the patronage, and you claim the nomination by virtue of a composition and covenants whereof you shew nothing, and you have admitted the disturbance; and we pray a writ to the Bishop.—*Pole*. The vicarage is a spiritual thing, to which a lay person ought not by common right to present, but the Ordinary, to whom it appertains to do so, shall confer the vicarage;

No. 4.

et ces successours un clerk, le quel² le Priour luy³ A.D. 1342. presentereit, et, sil nel feist,⁴ Levesque et ces successeurs durreint la vicare; et nostre predecessour, Levesque, &c., noma al predecessour le Priour cesty par qi mort la vicare⁵ est voide,⁶ qe fuit presente de Priour,⁷ et resceu, et institut; et noz predecessours les autres vikeres nomerent de tut temps devant, &c.; par quei nous venimes⁸ al Priour qore est, et ly nomasmes nostre clerk, A., &c.,⁹ et, puis qe le Roi avoit seisi, nous nomasmes¹⁰ mesme¹¹ celui A.¹² al Chauncelier lieu¹³ tenant le Roi, et unquore sumes prest de nomer au Roi; jugement, del houre qe le Roi cleyme lestat le Priour, et¹⁴ nous avoms nome au Roi, si tort en nostre persone put assigner;¹⁵ et, en cas qil ne voet¹⁶ pas, a nous appent a presenter.—*Thorpe*. Et nous jugement del houre qe vous avez conu qe le Roi est seisi del¹⁷ patronage, et clames la¹⁸ denomination par composition et covenants de quei vous ne moustres riens, et la destourbaunce avez conu; et prioms bref al [Fitz. Evesque.—*Pole*. La vicare est espirituele,¹⁹ a quei ley²⁰ persone de comune dreit ne deit pas presenter, mes Ordiner durra, a qi il atient²¹ de faire, la vicare;²² 166.]

¹ The words in the marginal note subsequent to *impedit* are from 25,184 alone.

² The words le quel are omitted from 16,560.

³ Harl., le; the word is omitted from L.

⁴ T. and Harl., ne fist; 25,184, ne fait; L., ne fet, instead of nel feist.

⁵ 16,560, viker.

⁶ 16,560 and Harl., mort.

⁷ The words de Priour are from L. alone; the other MSS., &c.

⁸ 16,560, venimes; L., venis-soms.

⁹ 16,560, saver, instead of A., &c.

¹⁰ 25,184, nomavoma.

¹¹ mesme is omitted from T. and L.

¹² A. is omitted from 16,560.

¹³ L., le.

¹⁴ Harl., qe.

¹⁵ The words put assigner are from L. alone.

¹⁶ L., volt.

¹⁷ L., de la.

¹⁸ la is omitted from T. and 25,184.

¹⁹ L., espirituele.

²⁰ T., quele la; L., al; Harl., a quel, instead of a quei ley.

²¹ T., attynt; Harl., atent.

²² The words la vicare are omitted from L., 16,560, and Harl.

celle, pur riens qil pout dire estre reserve al Ordiner sur la defaute de la vikarie; mes, pur ceo qil clama, &c., et de ceo ne mustra riens en especialte provant son dit, il fut juge destourbour, et bref al Evesque agarde pur le Roi, &c.¹ [Fitz. *Monstrans de faits fins et records*, 166.]

No. 4.

A.D. 1842. and, if at the time of the creation of the vicarage, he granted to the parson the power to present, whereas he might himself have conferred by common right, he could save the nomination; and since we have alleged this to have been put in operation from all time since the vicarage began, that is enough for us.—PARNING. Before there was a vicarage it was all one patronage of the whole church for the patron; and when the Ordinary, with the assent of the patron, assigned a certain portion to the vicarage, still the patronage of the vicarage, which was then parcel of the gross, remained in law to him who previously had the whole; then when the church was amortised and appropriated to the Prior, who thus ought himself to be patron, by common right the patronage of the vicarage belonged to him, and the Ordinary could never have it without a special covenant which lies in specialty.—*Thorpe*. A vicarage is a spiritual thing between Parson and Ordinary, but between others it is not so.—PARNING. I wonder that you did not take exception on this ground at the beginning; but you have passed that, and have pleaded to the action, and have admitted that the patronage belongs to the King, and you claim a nomination without shewing anything in relation to it, wherefore you are in a very [ill] case.—*Pole*. If a composition be made between one who is very patron and one who has nothing in the patronage, that one shall present at one time, and the other at another time,

No. 4.

et, si donques, sur lordinance de la vicare, il graunta a A.D. 1342. la persone de presenter ceo qil mesme¹ pout aver done de comune dreit, il pout salver la denomination ; et, depuis qe nous avoms allegge ceste chose myse en oeuvre² de tut temps puis qe la³ vicare comencea, ceo nous suffit.—PARN. Devant qe vicare y fuit tut fuit un patronage de tut leglise pur lavowe;⁴ et quant Lordiner,⁵ del assent le patron,⁶ assigna certeyn porcion a la⁷ vicare,⁸ unquore lavowere de la vicare,⁹ qe fuit donques parcel del gros, demora en ley a¹⁰ qi lentier fuit devant; donques quant¹¹ leglise fuit amorti et approprie¹² al Priour, qe covendreit estre mesme¹³ patrone, de comune dreit lavowere¹⁴ de la vicarie fuit a luy, quel Lordiner ne purreit jammes¹⁵ aver saunz especial covenant qe chiet en especialte.—*Thorpe*. Vicare est chose espirituele entre Personne et Ordiner, mes entre autres nest pas issi.¹⁶—PARN. Par ceo ay jeo mervaille qe vous nel challengeastes pas a comencement; mes vous estes passe cel, et avez plede al accion, et conu le patronage au Roi, et clames une denomination saunz rien moustrer de ceo, par¹⁷ quei vous estes en fort cas.—*Polz*. Si composicion se preigne entre un qest verray patrone et un¹⁸ qe nad rien en le patronage, qe¹⁹ lun presentera un foitz et lautre altre-

¹ T., qe luy, instead of qil mesme.

² T., oepré; 16,560, eue; 25,184, oeve; Harl., eovre.

³ la is omitted from L., 16,560, and Harl.

⁴ L., la vniere.

⁵ T., lordeyner; Harl., lordener.

⁶ L., la patrone, instead of le patron.

⁷ T. and Harl., al, instead of a la.

⁸ T., vikere.

⁹ The words de la vicare are omitted from 25,184.

¹⁰ L. and Harl., lui en, instead of ley a.

¹¹ quant is from T. alone.

¹² Harl., approwe.

¹³ L., eu.

¹⁴ Harl., lavoere.

¹⁵ jammes is omitted from L. and 25,184.

¹⁶ T. and Harl., ycy; 25,184, issint.

¹⁷ par is omitted from Harl.

¹⁸ L., 16,560, and Harl., celui.

¹⁹ L., et.

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A.D. 1842. if that composition become vested by possession, it shall be averred without a specialty; and also in our case, if the Ordinary, on the appropriation of the church, as it was within his power to appropriate or not, at his pleasure, reserved to himself such a nomination and advantage, and this Ordinary would of himself constitute a vicar and a vicarage, so by common right he could reserve to himself nomination in consideration of the appropriation, and also by common right the Ordinary ought to confer the vicarage, which is a spiritual thing, so it seems that this matter which has been put in operation may be averred, and we demand judgment.—PARNING. The Ordinary by himself, without the assent of the patron, shall never make a vicarage; and I well know that what he will do is of grace and of office; but out of this he can not reserve to himself a patronage which he never had before; and if it were reserved by composition between the patron and him on the appropriation, that would give the King a title to present, on account of the amortisation without his consent and licence. Now you make a claim in the patronage on a condition, and by a covenant and a certain ordinance, of which you do not shew a specialty—*Pole*. Before the Statute¹ he might have aliened well enough.—PARNING. You admit that, from all time from which the King takes his title, the Prior presented; then you can not by any such allegation

¹ Of Mortmain (9 Hen. III. c. 36, and 7 Ed. I. Stat. 2).

No. 4.

foitz, si cele composicion soit vestu par possession, ceo A.D. 1342. serra¹ avere saunz especialte; et auxi en nostre² cas, si Lordiner, sur l'appropriacion del eglise, a qi il fuit d'appropriier ou noun,³ a sa volunte,⁴ reserva a luy⁵ une tiele denominacion et avantage, et⁶ le quel Ordiner⁷ freit de luy mesme viker et vikerie,⁸ issi de comune dreit puit⁹ il reserver a luy denominacion pur l'appropriacion, et auxi de comune dreit Lordiner duist doner¹⁰ la vicarie qest espirituele, si semble il qe cele chose¹¹ mys en oeuvre¹² est averable, et demandoms jugement.—PARN. Ordiner de luy mesme, saunz assent de patron, jammes ne ferra vikerie;¹³ et jeo say bien qe ceo qil fra cest de grace et de¹⁴ office; mes¹⁵ de ceo il ne poet nient reserver a luy un patronage quel il navoit unques devant; et si ceo fuit reserve par composicion entre le patron et luy sur l'appropriacion, ceo durreit title au Roi a presenter pur lamortissement countre soun gree et soun conge. Ore¹⁶ sur condicion vous clames en le patronage, et par covenant et certeyne ordinaunce, de quei vous ne moustrez pas especialte.—Pole. Devant le statut il pout aver aliene assez bien.—PARN. Vous conusez qe le Priour, de tut temps de¹⁷ quei le Roi prent soun title, presenta; donques ne poez vous par nul tel

¹ Harl., ne serra.² T., and 25,184, ceo.³ The words ou noun are omitted from L.⁴ The words a sa volunte are from 16,560 alone.⁵ The words a luy are omitted from Harl.⁶ et is omitted from 16,560.⁷ T., lordiner; 16,560, patrimon; L., patron.⁸ L. and 16,560, vicare; 25,184, vicarie.⁹ 16,560, poait.¹⁰ 25,184, deut aver doner, instead of duist doner.¹¹ chose is omitted from 25,184.¹² T., oeuvre; 16,560, overe; 25,184, euvre; Harl., cover.¹³ T., vikere.¹⁴ de is from L. alone.¹⁵ T., ne mye; 25,184, venue.¹⁶ 16,560, ore et.¹⁷ de is omitted from L.

No. 4.

A.D. 1342. oust the King, on the ground of a special matter of which you shew nothing, from his presentation; and it has been seen that the King brought a *Quare impedit* against the Dean and Chapter of Lincoln, in respect of the prebend of Aylesbury, and took his title for that the Bishop held the advowson of him in chief, and made thereof three prebends, and dismembered it without his license, and some persons held this not to be a very good title, any more than if a vicarage were made of a church the advowson whereof is holden of the King, because nothing is lost to the King; for the patronage of the whole is saved to him when his time comes, because when a vicarage is made, the patron and no other shall by common right present to it; but in this case it would be contrary to right and reason that the Bishop, who had previously nothing in the patronage, should, on account of the appropriation of the church and the creation of the vicarage, gain the patronage thereof to himself.—*Pole*. The Bishop, who is the Ordinary, will, in spite of the patron, make a vicarage.—*HILLARY*. Certainly what you say is wrong; for the Bishop of Lincoln appropriated two churches and had a commission from the Pope to certain persons to make vicarages with the assent of the patron; and since you have made a claim in the patronage on a condition whereof you do not shew anything to the Court, and so have admitted the disturbance, the Court adjudges that the King do have a writ to the Bishop.

No. 4.

alleggaunce¹ ouster le² Roi, par chose especiale de quei A.D. 1342. vous ne moustres rien, de soun presentement; et homme ad vew qe le Roi porta *Quare impedit* vers le Dean et le Chapitre de Nicole, de la provandre de Aylesbury, et prist soun tittle pur ceo qe Levesqe tynt lavoweson³ de luy en chief, et fit de ceo⁴ iij provandres,⁵ et le⁶ demembra saunz sohn conge, et asquns gentz tyndrent ceo noun pas⁷ molt⁸ bon tittle, nient pluis qe si dune eglise dount lavoweson est tenu du Roi vikerie soit fait, qar rien depiert au Roi; qar le patronage, quant soun temps vendra, luy est salve del tut, qar quant⁹ vikere est fait, de comune dreit le patron et nul altre luy presentera; mes en ceo cas Levesqe, qe rien navoit devant en le patronage, pur lappropriacion¹⁰ deglise, et lordinaunce de la vikerie, qil¹¹ freit a luy mesme une avowere serroit coudre dreit et resoun.—*Pole*. Levesqe qest (Ordiner, maugre¹² le patron, fra viker.—HILL. Certes vous dites mal, qar levesqe de Nicole appropria deux eglises et avoit commission del Pape as certeyns persones dordiner vikers par assent del patron; et depuis qe vous avez clame par¹³ condicion en lavowere,¹⁴ de quei *Judicium*.¹⁵ vous ne moustres rien a la Court, et issi avez¹⁶ conu¹⁷ la destourbanche, agarde la Court qe le Roi eit

¹ T. and 25,184, dire ne par tiele alleggaunce; 16,560 and Harl., ne par tele alleggaunce, instead of par nul tel alleggaunce.

² L. and 16,560, de.

³ L., savoweson.

⁴ ceo is not in L.

⁵ 25,184, provandres.

⁶ 16,560 and Harl., les; the word is omitted from L.

⁷ The words noun pas are omitted from 16,560.

⁸ molt is omitted from T.

⁹ quant is not in Harl.

¹⁰ The words pur lappropriacion are omitted from 16,560.

¹¹ 16,560, qe.

¹² L., mal gree.

¹³ 16,560, qar.

¹⁴ L., lavoweson; Harl., lavoere.

¹⁵ The marginal note *Judicium* is from 16,560 alone.

¹⁶ L., auxi.

¹⁷ conu is not in Harl.

No. 4.

A.D. 1342. —And note that an Abbot can not without license give land to another Abbot in exchange, on account of the Statute.¹

¹ Of Mortmain (9 Hen. III. c. 36, and 7 Ed. I. Stat. 2).

No. 4.

bref al Evesqe.—*Et nota* qun Abbe ne poet pas doner A.D. 1342.
terre a un altre Abbe en eschaunge¹ saunz conge,
*propter statutum.*²

¹ 16,560, estraunges; Harl., eschaunges.

² L., fait, &c.

According to the record of this case, the King's claim was "ratione temporalium Prioratus de Priterwelle in manu Regis, occasione guerræ inter ipsum Regem et homines de Francia motæ, existentium, &c." The "*demonstratio*" was "quod quidam Jacobus de Cusaunce, quondam Prior de Priterwelle, fuit seisisus de advocacy vicariæ prædictæ ut de jure ecclesiæ suæ de Priterwelle, qui ad eandem vicariam præsentavit quendam Gilbertum de Hardyngham qui, &c." "post cujus mortem prædicta vicaria modo vacat," and "occasione guerræ, &c.," as before, it belongs to the King to present, and the Bishop "impedit." The damages are laid at 1,000*l.* "Et hoc [Johannes de Clone qui sequitur pro domino Rege] paratus est verificare."

For the Bishop it was said "quod, tempore quo prædicta ecclesia de Stoke atte Neylond, ad cujus vicariam dominus Rex clamat nunc præsentare, fuit appropriata Priori de Priterwelle, &c., ordinatum fuit per Episcopum Norwicensem, qui tunc fuit, prædecessorem, &c., loci illius Ordinarium, quod, quandoque vicaria ecclesiæ prædictæ vacaret, Episcopus Norwicensis qui pro tempore fuisset nominaret idoneam personam Priori loci prædicti qui pro tempore fuisset, et idem Prior ean-

dem personam et non aliam ad præfatam vicariam præsentaret, et si idem Prior alium quam prædictus Episcopus sibi nominaret ad vicariam illam præsentaret prædictus Episcopus vicariam illam, ut in jure suo, ratione ordinationis prædictæ, cuiusque voluisset conferret. Et dicit quod quidam Johannes quondam Episcopus, &c., prædecessor, &c. nominavit præfato Jacobi [sic] Priori, &c. præfatam Gilbertum, &c., et idem Prior eundem Gilbertum præfato Episcopo, ad denominationem ejusdem Episcopi, præsentavit, qui ipsum ad vicariam illam admisit et ipsum instituit in eadem. Et dicit quod, tempore quo prædicta ecclesia appropriata fuit, omnes Episcopi, &c., prædecessores, &c., nominaverunt idoneam personam, &c., tempore vacationum vicariæ prædictæ, Prioribus loci prædicti prædecessoribus, &c., qui in forma prædicta fuerunt admissi et instituti in eadem, &c. Et post mortem prædicti Gilberti ipse Episcopus nunc, apud Gyppe-wycum in Comitatu Suffolciæ, die Lunæ proxima post festum Purificationis beatæ Mariæ, anno regni domini Regis nunc sexto-decimo, in præsentia Roberti de Sekford, Johannis Spicer, Johannis del Feld, Walteri Aubrey, et aliorum, nominavit Priori qui nunc est quondam Rogerum de Stowe capellanum, rogando quod ipsum Rogerum ipsi Episcopo ad vicariam præ-

No 5.

A.D. 1342.

Quare non admisit for the King. And note that the defendant shall not have oyer of the record, even though the writ should be brought by a person other than the King (as appears in the Derby Eyre before Herle and his companions) nor in *Quare incumbra-vit* (as appears below, M. 17).

(5.) § The King brought a *Quare non admisit* against the Bishop of Norwich, and counted how that he recovered his presentation to the vicarage of Stokeby-Nayland, which belonged to the Prior of Prittlewell by reason of the lands of the Prior being in his hand, &c., and thereupon sent his writ of judgment to the Bishop to admit his presentee, viz. one William de Mirfelde, clerk, and counted when and in whose presence the writ was delivered to the Bishop, and that the Bishop would not admit the clerk, tortiously and in contempt of the King's command, and in enervation of the judgment, and to the damage of the King.—*Pole* demanded oyer of the record.—*Thorpe*. This is an original writ and not one issued upon the record; and even if it were a judicial writ you would not have oyer, for nothing on which judgment is given is to be recovered against you, but the suit is made against you as against an officer who ought to execute the King's command like a Sheriff.—*Pole*. We are

“ dictam præsentaret. Et postea,
 “ pro eo quod feoda et advoca-
 “ tiones ad prædictum Prioratum
 “ spectantia fuerunt in manum
 “ domini Regis, &c., idem Epis-
 “ copus nunc nominavit Can-
 “ cellario domini Regis, suppli-
 “ cando ut prædictum Rogerum
 “ ipsi Episcopo ad prædictam vica-
 “ riam præsentaret. Et dicit quod
 “ tempus semestre nondum elap-
 “ sum est, et adhuc paratus est
 “ nominare domino Regi eundem
 “ Rogerum, si ipsum admittere et
 “ ulterius ei præsentare voluerit,
 “ &c. Et ex quo dominus Rex
 “ præfatum Rogerum sic per ipsum
 “ Episcopum nominatum præsen-
 “ tare recusat, ad ipsum Epis-
 “ copum, in jure suo proprio, ra-
 “ tione ordinationis prædictæ, per-
 “ tinet ad prædictam vicariam

“ conferre, &c., Unde dicit quod
 “ ipse non intendit quod dominus
 “ Rex ad demonstrationem suam
 “ prædictam responderi velit, &c.”
 Then on behalf of the King,
 “ Johannes qui sequitur, &c.,
 “ dicit quod prædictus Episcopus
 “ expresse cognovit quod dominus
 “ Rex seisisus est de advocacione
 “ vicariæ prædictæ, et quod ad
 “ ipsum dominum Regem pertinet
 “ ad vicariam illam, ratione præ-
 “ dicta, præsentare, nec dedit
 “ quin ipse Episcopus impedivit
 “ dominum Regem ad eandem
 “ præsentare, &c. Et quo ad hoc
 “ quod idem Episcopus superius
 “ allegat quandam ordinationem
 “ factam fuisse de vicaria prædicta
 “ per Episcopum Norwicensem in
 “ forma supradicta, hoc proprie
 “ sonat in naturam conventionis,

No. 5.

(5.)¹ § Le Roi porta *Quare non admisit* vers A.D. 1342.
 Levesqe de Norwicz,² et counta coment il recovers *Quare non*
 soun presentement a la vikarie de Stoknelond³ vers *admisit*
 le Priour de Pritrewelle⁴ par resoun de terres le *pur le Roy.*
 Priour en sa mayn, &c., et sur ceo manda⁵ soun bref *Et nota*
 de jugement al Evesqe de resceyvre soun presente, *qe lo de-*
 saver un W.,⁷ clerk, et counta quant et en qi pre- *fendant*
 sence le bref luy fuit livre, Levesqe resceyvre nel *navera*
 voleit atort, et en despit del maundement le Roi, et *mye oy*
 enervacion⁸ del jugement et a damage le Roi.—*Pole* *del record,*
mesqe ceo
bref fuit
porte par
aoltre qe
par le Roi,
ut patet in
Itinere
Derby
coram
Herle et
sociis suis,
nen Quare
incumbra-
vit, ut
patet
infra,
M. xvij.²
[Fitz.
Quare non
admisit,
8.]
*original, et*¹⁰ noun pas issu del record; et, tut fuit ceo
 judicial, vous naverez pas oy,¹¹ qar rien nest a re-
 coverir vers vous sur quei jugement est rendu, mes la
 suyte est fait devers vous com devers¹² ministre qe
 devez faire execucion del maundement le Roi com
 Vicounte.—*Pole*. Nous sumes en altre cas, qar nous

" &c., de qua nihil specialitatis
 " Curie hic ostendit. Unde petit
 " judicium et breve Episcopo, &c."
 Judgment was given as follows:—
 " Et quia videtur Curie hic quod
 " predictus Episcopus nihil dicit
 " quare dominus Rex presenta-
 " tionem suam ad vicariam præ-
 " dictam ratione predicta habere
 " non debet, consideratum est quod
 " dominus Rex recuperet presenta-
 " tionem suam ad eandem vicariam
 " versus eum. Et habeat breve
 " eidem Episcopo loci illius Ordi-
 " nario, quod, non obstante recla-
 " matione predicti Episcopi, ad
 " presentationem domini Regis ad
 " predictam vicariam idoneam per-
 " sonam admittat. Et idem Epis-
 " copus in misericordia."

¹ From T., L., 16,560, 25,184, and
 Harl. In T. and 25,184 the case
 is placed as No. 13, but it seems to
 follow No. 4 more naturally (as in

the other MSS.), since it relates to
 the same subject. The record is
 among the *Placita de Banco*,
 Easter, 16 Edw. III. R^o. 144.

² The marginal note subsequent
 to the word *admisit* is from 25,184
 alone.

³ L., Northwyc; 16,560 and
 Harl., Northwic; 25,184, Nortwiz.

⁴ T. and Harl., S.; L., Stokeley-
 land.

⁵ T. and L., P.; 16,560, Prete-
 welle; Harl., Petrewelle.

⁶ T., comanda.

⁷ The MSS. of Y.B., A. The
 presentee was, according to the
 record, William de Mirfelde.

⁸ L., entardacion.

⁹ T., ceo bref est; L. and Harl.,
 ceo bref, instead of cest est bref.

¹⁰ et is omitted from L., 16,560,
 and Harl.

¹¹ oy is from L. alone.

¹² devers is from L. alone.

No. 5.

A.D. 1342. in a different position, for we can plead as to the right, and avow, and the Sheriff can not do so; and, if there be no judgment, the writ is not warranted by law.—HILLARY. What if the record were in another Court? Should we stay proceedings until it came? And I well know that you would not have such a writ in the Chancery if they were not apprised that there was a record.—And then the Court caused the record to be fetched, and inspected it.—*Rokel*. Now in this term the King has recovered against the Bishop his presentation to the same vicarage by a *Quare impedit*, and by this suit he is to recover the same thing, and we do not understand that the King will be answered.—And he did not dare to abide judgment upon that; and therefore he made protestation of his right, as above in the *Quare impedit*, and said further that no writ came to him; ready, &c.—*Thorpe*. If he will plead his right for answer, then it shall be entered, but not otherwise.—And to this the Court agreed.—And he would not so plead, wherefore they were at issue as to the receipt of the writ [by the Bishop].—And note that *Rokel* afterwards came and prayed earnestly that his protestation might be entered so as to save his right.—And he could not have it entered.—And he made a bill of his protestation and prayed that one of the Justices would seal it.—HILLARY said that the Statute was to be understood only of matter pleaded, and would not seal the bill.—*Quære*. Stat. West. 2. c. 31.

No. 5.

poms pleder¹ en dreit, et avower, et si ne puit Vi- A.D. 1342.
counte faire; et, sil nest² pas jugement, le bref nest
pas garranti par ley.³—HILL. Quei si le record fuit
en altre place? Surserroms nous tanqe il venist? Et
jeo sai bien qe vous naverez pas⁴ tiel bref en Chaun-
cellerie sil ne fuissent appris⁵ qil y avoit⁶ record.
—Et puis la Court fist chercher⁷ et vist⁸ le record.—
Rokel. Ore ceo terme le Roi ad recovery vers Levesqe
soun presentement a mesme la vicarie par *Quare*
impedit, et par ceste suyte est a recoverir mesme la
chose, et nentendoms pas qe le Roi voille⁹ estre re-
spondu.—Et sur ceo nosa demorer; par quei il fit
protestacion de soun dreit, *ut supra* en le *Quare im-*
pedit, et dit outre qe nul bref luy vynt,¹⁰ prest, &c.—
Thorpe. Sil voet pleder soun dreit¹¹ pur respons,
donques serra il entre, *et aliter*¹² non; *ad quod Curia*
consensit.¹³—Et il ne voleit; par quei sur la receite
du bref furent ils a issue.¹⁴—*Et nota* qe puis il vynt,
et pria fortement¹⁵ qe sa protestacion¹⁶ fuit entre pur
salver son dreit.—*Et non potuit*.—Et il fist bille de sa
protestacion et pria qe asqun¹⁷ des justices lensealast.¹⁸—
HILL. dit qe le statut nest a entendre forsqe de chose de
plede, *et noluit*, &c.—*Quære. Stat. W. ij. Cap.º. xxxij.*¹⁹

¹ L., pledoms, instead of poms
pleder.

² T., neit.

³ L., la ley.

⁴ L., nul.

⁵ L., sussent, instead of fuissent
appris.

⁶ 16,560, navoit; L. avoit, in-
stead of y avoit.

⁷ T. and Harl., sercher; 25,184,
sercher.

⁸ 16,560, eust.

⁹ L., voit.

¹⁰ 25,184, soit.

¹¹ 25,184, bref.

¹² L., 25,184, and Harl., *alias*.

¹³ Harl., *consensit*.

¹⁴ According to the record, which
is very short, the Bishop pleaded
"quod nullum breve ei liberatum
" fuit de admittendo prædictum
" Willelmum de Mirfelde." Issue
was joined thereon. The case ends
with the award of the *Venire*.

¹⁵ T., 25,184, and Harl., forment.

¹⁶ 25,184 and Harl., proces; L.,
prodestacion.

¹⁷ 16,560 and Harl., asouns.

¹⁸ Harl., lenceleat.

¹⁹ The reference is from Harl.
alone.

Nos. 6, 7.

A.D. 1342.
Detinue.
And observe that
issue was
taken on
the de-
tinue, and
not on the
manner of
the bail-
ment.

(6.) § Detinue of a chest full of muniments delivered to the defendant, to be re-delivered at the will of the plaintiff, &c.—*Gayneford*. We tell you that he delivered to us a chest sealed (and what was inside it we do not know) to be delivered to one A. to whom we have delivered it; ready, &c.—*Pole*. You must take issue on the detinue, for what you say is tantamount to saying that you do not detain it as we have counted; ready, &c. [that you do so detain it].—And the other side said the contrary.—*Quære* whether he could have an issue on the manner of the bailment.

Avowry,
where the
plaintiff
had, as
tenant for
term of
life, prayed
in aid one
in rever-
sion, and
the prayee
in aid was
essoined
as being
on the
King's
service.
And, if
there had
not been a
defect in it,
the essoin
would
have been
adjudged
and ad-
judged.

(7.) § Avowry by reason of partition made, because more was allotted to one than to the others. She to whom more was allotted granted to her co-parceners a certain charge issuing out of her purparty, and for that charge in arrear the avowry was made for an assignee of an assignee. The tenant who was plaintiff, because he held only term for life, prayed aid by reason of the reversion. The aid was granted, and, at the return of the summons, he who was prayed in aid was essoined by a common essoin. At another day he appeared; the avowant was essoined, and had a day over. And now the prayee in aid is essoined as being on the King's service.—*Thorpe*. The essoin as being on the King's service does not lie, for a Pro-

Nos. 6, 7.

(6.)¹ § Detenue dune ciste³ pleyn de munimentz⁴ livre A.D. 1342.
al defendant, a rebailier a la volente le pleintif, &c.— Detenue.
Gayn. Nous vous dioms qil nous bailla une ciste³ *Et vide*
enseale,⁵ et ceo qe fuit dedeinz⁶ nous ne savoms, a issu pris
bailler a un A., a qi nous lavoms baille; prest, &c.— sour la
Pole. Il covient qe vous preignes⁷ issu sur la detenue, et
qar taunt amoute qe vous ne la detenes pas come ne mye
nous avoms counte; prest, &c. *Et alii⁸ e contra.* sour la
Quere sil purreit aver issue sur la manere del baille. manere du
baille.²

(7).⁹ § Avowere par cause de parcenerie fait,¹¹ pur
ceo qe plus fuit allote a lune qe as autres.¹² Cele¹³
a qi plus fuit allote graunta a ces parceners certeyn
charge issaunt de sa purpartie, et pur cele charge
arere lavowere fuit fait pur¹⁴ assigne de assigne. Le
tenant qe fut¹⁵ pleyntif, pur ce qil navoit qe terme
de vie, pria eide par cause de reversion. Leide fut
grante, et a la somons retourne cely qe fuit prie en
eide fuit essone de comune essone. A un autre jour
il apparust; lavowaunt fuit essone et out¹⁶ jour outre.
Et ore le prie en eide est essone de service le Roi.—
Thorpe. Essone de service le Roi ne gist pas, qar

¹ From T., 16,560, 25,184, and Harl.

² The words of the marginal note subsequent to Detenue are from 25,184 alone.

³ Harl. boiste.

⁴ 16,560, 25,184, and Harl. monuments.

⁵ T., ensewale.

⁶ T., and 25,184, deins.

⁷ Harl., pernez.

⁸ Harl., *alibi*.

* From T., L., 16,560, 25,184,
and Harl.

¹⁰ The words subsequent to

Avowre are from 25,184 alone. In Harl., there is in the margin the word Avoerie, with a short further note.

¹¹ L., fut; Harl., fet.

¹² The words *as autres* are from 16,560. The other MSS. a *laure*.

¹³ T. and L., colui.

¹⁴ L., sour.

^{1b} The words *qe fut* are from L. alone.

¹⁶ 16,560, avoit ; 25,184, eust ;
Harl., ust.

No. 7.

A.D. 1342. tection for him would not be allowed, inasmuch as it would not be allowed for the person who prayed him in aid, because that person is plaintiff, nor consequently for him.—*Pole*. That does not follow, for the essoin as being on the King's service does lie for the plaintiff in many cases where a Protection is not allowable; and it has been clearly seen that after avowry a Protection has been allowed for the plaintiff, for after the avowry he is in a manner defendant.—*HILARY* adjudged that the essoin did lie.—And then the essoin was read, and it was to this effect:—"A., who is on the service of the Lord the King, without whom the plaintiff can not answer, &c."—And because the essoin was defective, inasmuch as it did not mention that he was prayed in aid,—for the form should be:—"A., who is on the service of the Lord the King of whom, &c. he prayed aid, and without whom the aforesaid, &c. can not answer, &c. in a plea of taking, &c.," and this essoin can not be amended by the Court like a common essoin, as it was said,—the essoin was quashed.—And the plaintiff wished to have abated the avowry, because the avowant avowed as brother and heir of J., to whom and one M. his wife, and the heirs of his brother, the rent was granted, and M. was not by the avowry made out to be dead.—*Thorpe*. If you will say that she is alive, that is to our action; but otherwise you shall not be admitted to abate the form, because by the aid-prayer you have accepted it.—And he (*Pole*) did not dare to abide judgment, and he prayed oyer of the charge.—*Thorpe*. To the Court we will willingly produce the deed, but not to you after the aid-prayer.—And nevertheless,

No. 7.

proteccion pur luy ne serra pas allowe, qar il¹ ne A.D. 1342. serra pas allowe² pur celuy qe luy pria en eide, pur ce qil est pleyntif, *nec per consequens* pur luy.—*Pole.* *Non sequitur*, qar essone de service le Roi gist pur le pleintif en meynt cas ou proteccion nest pas allowable; ³ et homme ad bien vieu qe apres avowere⁴ [proteccion ad este allowe pur le pleintif, qar apres lavowere]⁵ en manere il est defendant.—*HILL.* agarda qe lessone igist.—Et puis lessone fuit lieu qe voleit A.,⁶ *qui*⁷ *est*⁸ *in servitio domini Regis, sine quo* le pleyntif *non potest*⁹ *respondere, &c.*—Et pur ceo qe lessone fuit defectif, en taunt¹⁰ qil ne fist pas mencion qil fuit prie en eide, qar la fourme serroit¹¹ A., *qui*⁷ *est in servitio domini Regis, de quo, &c., petit auxilium et sine quo prædictus, &c., non potest respondere, &c., de placito captionis, &c.*, et ceste essone ne put par Court estre amende come comune essone, *ut dicebatur*, et lessone fuit quasse.—Et le pleyntif voleit aver abatu lavowere, pur ceo qe lavowaunt avowa come frere et heir J., a qi¹² et une M.,¹³ sa femme, la rente fuit graunte, et a les heirs soun frere, et M.¹³ ne fuit pas fait mort par lavowere.¹⁴—*Thorpe.* Si vous voillez dire gele est en vie cest a nostre¹⁵ accion; mes autrement dabatre la fourme navendres pas, pur ceo qe par leide priere levez accepte.—Et nosa pas demurer, et demanda oy de la charge.—*Thorpe.* A la Court mettroms avant les fets¹⁶ volunters, mes a vous nynt apres eide prier.—

¹ T., ele.² The words qar il ne serra pas allowe are omitted from all the MSS. but T. and L.³ 16,560, allowe; L., alowabelle.⁴ Harl., avocer.⁵ The words between brackets are omitted from T.⁶ T., ce, instead of qe voleit A.⁷ All the MSS. except Harl., *quod*.⁸ *est* is omitted from 25,184.⁹ Harl., rien put, instead of *non potest*.¹⁰ 16,560, tut.¹¹ T. and 25,184, est.¹² The words a qi are omitted from 16,560.¹³ 16,560, E.¹⁴ The words par lavowere are from T. and 25,184 alone.¹⁵ 16,560, vostre.¹⁶ The words mettroms avant les fets are from L. alone.

No. 8.

A.D. 1342. afterwards he had *gratis* oyer of the deeds [as to the charge] and of the deed shewing how it was assigned.—And afterwards *Stouford* said:—He of whom aid was prayed has since died, and has issue a son J., without whom we can not charge, and we pray aid, &c.—*HILLARY*. You shall not have it, for we have adjudged that you shall answer alone without aid, and after that judgment you have taken exception to the avowry, wherefore you shall not have aid now.—And afterwards because they were not ready to answer to the avowry it was adjudged that the plaintiff and his pledges should be in mercy, and the Return was adjudged to the avowant.—And note this strange judgment, when the party was in Court.—And note that on such a judgment the party will have a Second Deliverance, as appears afterwards in next Michaelmas term.

Attaint
on a writ
of Trespass
which
passed
against the
defendant.
And ob-
serve that,
notwith-
standing
this suit, he
shall make
a fine to
the King.

(8.) § John atte Welleheved, of Ashwell, brought an Attaint against William de St. Neot, in respect of an inquest which passed on an Oyer and Terminer, by which John was found guilty of a certain trespass, &c.—*Thorpe*. You find by the record that it was adjudged that John should be taken, and you will not find by the record that he has made a fine; wherefore, for the King, we pray that the body may remain [in prison.]—*Pole*. By this suit we are to annul the

No. 8.

Et tamen gratis apres¹ il avoit oy² des fetes, et de A.D. 1342. fet³ coment il fut⁴ assigne.—Et puis *Stouf.* dit qe celui de qi eide est prie est mort puis cele temps, et ad issue un fitz J., saunz qi nous ne poms⁵ charger, et prioms eide, &c.—HILL. Ceo naverez vous pas, qar nous avoms agarde qe vous respondrez soul saunz eide, et apres cele agarde avez challenge lavowere, par quei vous naverez pas eide ore.—Et puis pur ceo qils ne furent pas prest a respondre a lavowerie, fuit agarde qe le pleyntif et ces plegges furent en la mercy, et retourn agarde⁶ al avowaunt.—*Et nota mirabile judicium*, ou la partie fuit en Court.—*Et nota* qe sur tiel⁷ agarde partie avera a secunde deliverance, *ut patet postea termino Michaelis proximo.*⁸

(8.)⁹ § Johan atte Welleheved, de Asshewelle,¹¹ porta une Atteint vers William¹² de Seint Nee,¹³ dun enqueste qe passa sur un oier et terminer, par quel Johan fuit trove coupable de certeyn trespas, &c.—*Thorpe*. Vous trovez¹⁴ par record qe agarde fuit qe Johan fuit pris, et vous ne troveras¹⁵ pas par le record qil¹⁶ ad fait fyne; par quei, pur le Roi, nous prioms qe le corps demoerge.—*Pole*. Par ceste suyte sumes danienter

Atteinte sur bref de trespas qe passa contre le defendant. *Et vide non obstante* ceste suite qil fra fyn au Roi.¹⁰

[16 Li.

Ass. 4 ;

Fitz.

Attaint,

24.]

¹ apres is from L. alone.

² 16,560, moustre.

³ The words de fet are from L. alone.

⁴ T. and Harl., est ; 25,184, ad.

⁵ L., vous ne poez, instead of nous ne poms.

⁶ agarde is from L. alone.

⁷ L. and Harl., cel.

⁸ The words from *ut* to the end are from T. alone.

⁹ From T., L., 16,560, 25,184, and Harl.

¹⁰ The words of the marginal note subsequent to *Atteinte* are from 25,184 alone.

¹¹ T. and L., Assewelle ; 16,560, Asshewelle ; 25,184, atte Welleheud ; Harl., Bass', instead of atte Welleheved de Asshewelle. The true name has been supplied from the record of the case next below (No. 9).

¹² All the MSS. of Y.B., Richard, instead of William. The true name has been supplied from the record of the case next below (No. 9).

¹³ L., Need ; Harl., Nede.

¹⁴ 16,560, troveras.

¹⁵ T. and 25,184, troves.

¹⁶ Harl., qe Johan.

No. 9.

A.D. 1342. first suit just as much as by a writ of Error, wherefore we shall not make a fine which may afterwards be defeated.—HILLARY. Truly you shall do so in either case, and you shall be in custody until you have made a fine, but we order the Warden of the Fleet that you be before us every day pending the suit.—And then the record was read, and it purported that the persons named were found guilty, and that judgment was given against them that the plaintiff should recover his damages against them, and that they should be taken, and that execution should be stayed, because the plaintiff said that he intended to sue against others.—And afterwards John, the present plaintiff, was found guilty, by reason whereof it was adjudged, &c. that the said John should be taken.—*Thorpe*. There is no judgment in this record against John; wherefore you have not a full record. And he said further that the record was in fuller form in the possession of the Justices.—Therefore the plaintiff was told that he should sue the fuller record.

Trespass
justified.
And note
well that

(9.) § This same John atte Welleheved, of Ashwell (Herts), brought a writ of Trespass against this same William de St. Neot, in respect of goods carried away,

No. 9.

la primere suyte si avant com par bref derroure, par A.D. 1342. quei nous ne froms pas fyn quele purra¹ apres estre defait. HILL.—Verement² si frez³ et en lun et lautre cas, et vous serrez en garde si la qe vous eiez fait fyn, mes nous comaundoms al Gardeyn de Flete qe vous soiez⁴ chesqun jour devant nous pendaunt la suyte.—Et puis le record lieu, qe voleit qe les uns nomes furent soilles, vers ceux jugement se fist qe le pleintif recoverast vers eux⁵ ces damages, el qils fuissent pris, el qe execucion cessereit, pur ceo qe le pleyntif dit qil voleit suir vers altres.⁶—Et puis Johan qe ore est pleyntif fuit soille,⁷ *per quod consideratum⁸ est,⁹ &c. quod¹⁰ prædictus Johannes capiatur.*—Thorpe. Il ny ad pas jugement en ceo record vers Johan, par quei vous navez pas pleyn recorde. Et dit outre qe le record fuit pluis pleyn vers les Justices; par quei dit luy est¹¹ qil sue¹² le record pluis pleyn.

(9.)¹³ § Mesme celuy Johan atte Welleheved de Asshe-
welle¹⁵ porta bref de trespas vers mesme celuy William¹⁶
de¹⁷ Seint Nee, des biens emportes, qe alleggea le

Trespas
justifie.¹⁴
Et nota
bene qil ne
pout mie

¹ L. and 25,184, poet; 16,560 and Harl., put.

² T., verrement.

³ 16,560, freit; 25,184, freez.

⁴ L., eyt.

⁵ The words *vers eux* are omitted from 16,560.

⁶ The words *vers altres* are omitted from 25,184.

⁷ Harl., soule.

⁸ 16,560, *concederatum*.

⁹ All the MSS., except 25,184, *fuit*.

¹⁰ Harl. and 25,184, et.

¹¹ L., fut.

¹² 16,560, *suyt*; 25,184, *suye*.

¹³ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter 16 Edw. III. B^o. 28 d.

¹⁴ Justifie is from 16,560 alone.

¹⁵ The name is from the record cited below. T., Johan Ashwelle; L., Johan Assewell; 16,560, Johan Asshwelle; Harl., Johan, instead Johan atte Welleheved de Asshe-welle.

¹⁶ The MSS. of Y.B., Richard.

¹⁷ de is omitted from T., and the words *de Seint Nee* are omitted from Harl. Observe that, according to the record cited below, the person was described in this action as "Willelmus Pelis de Sancto Neoto," and in the Oyer and Terminer as "Willelmus de Sancto Neoto," vicar of the Church of Ashwell.

No. 9.

A.D. 1342. And William alleged a recovery in Oyer and Terminer, the plain-
tiff could
not in this
case aver
his writ in
general
terms. and that the Sheriff, by the King's command, caused these goods to be appraised, and delivered them to him for the damages recovered, and thus he took them by delivery from the Sheriff; judgment, whether tort, &c.—*Rokel* would have averred his writ, and could not be admitted thereto; wherefore he said that William took the goods *de son tort demesne*, without such cause; ready, &c.—And the other side said the contrary.

No. 9.

recoverir³ en loier et terminer, et qe le Vicounte, par A.D. 1342. le comaundement,³ le Roi fist preiser ces biens, et livra a luy pur les damages recoveres,⁴ et issi les prist il⁵ par livere de Vicounte; jugement si tort, &c.—*Rokel* voleit aver avere son bref,⁶ et non potuit admitti; par quei il dit qil les prist de soun tort demene, saunz tiele cause; prest, &c. *Et alii e contra.*⁷

¹ The words of the marginal note subsequent to justify are from 25,184 alone.

² 25,184, recorde.

³ 25,184, maundement.

⁴ 25,184, recoveris, &c.

⁵ il is from L. alone.

⁶ The words son bref are omitted from 25,184 and Harl.

⁷ The record throws much light on this case and on that which immediately precedes:—
 “Willelmus Peliz de Sancto Neoto, Thomas de Estone [and five others] attachiati fuerunt ad respondendum Johanni atte Welleheved de Asshewelle de placito quare ipsi simul cum [3 others] vi et armis bona et catalla ipsius Johannis atte Welleheved ad valentiam sexaginta solidorum apud Asshewelle inventa ceperunt et asportaverunt contra pacem Regis, &c.” The declaration was that W. Peliz and the others with swords, bows and arrows, &c., carried away the goods and chartels [enumerated] against the peace, and the damages were laid at 10*l*. Peliz pleaded “quod ipse alias per nomen Willelmi de Sancto Neoto vicarii ecclesie de Asshewelle coram Thoma Wake de Lydell et sociis suis Justiciariis domini Regis ad quasdam transgressionem eidem Willelmo in

“prædicto comitatu [Hertford] per prædictum Johannem atte Welleheved et alios illatas tulit quoddam breve de audiendo et terminando transgressionem illas versus ipsum Johannem atte Welleheved et alios in brevi illo nominatos, super quo brevi processus coram eisdem Justiciariis continuatus fuit usque diem dominicam proximam post festum Translationis Sancti Benedicti Abbatis anno regni domini Regis nunc [blank in the roll] apud [blank in the roll], quo die idem Willelmus narravit versus ipsum Johannem atte Welleheved, et quosdam alios in brevi illo nominatos, videlicet quod ipsi certis die et anno domos ipsius Willelmi apud Asshewelle vi et armis fregerunt, et diversa bona et catalla sua ad valentiam trescentarum librarum ibidem inventa, ceperunt et asportaverunt contra pacem domini Regis, &c., et quod idem Johannes et alii placitarunt videlicet quod ipsi in nullo fuerunt culpabiles de transgressionem prædicta, et de hoc possuerunt se in juratam patrie &c., ita quod per juratam inde inter partes prædictas coram præfatis Justiciariis apud Crucem Roesie postea captam convictum fuit quod prædicti Johannes atte Welleheved, et alii qui placita-

Nos. 10, 11.

A.D. 1342.
 Sheriff's
 return
 "coram
 Justicia-
 riis ves-
 tris" ad-
 judged
 good.

(10.) § *Scire facias* upon the note of a fine. The Sheriff returned *Scire feci, &c., ad essendum coram Justiciariis vestris apud Westmonasterium ad diem in brevi contentum ad ostendendum secundum tenorem istius brevis*. And exception was taken to that return, on the ground that it had the effect of supposing that the party had a day before the Justices of ROGER HILLARY, the Chief Justice, because it was his writ which issued to the Sheriff.—And, this notwithstanding, the return was held to be good, because it is the King's writ even though it be under the *Teste* of a Justice.

Essoin on
 the King's
 service,
 for a
 woman for
 the reason
*quia nu-
 trix, &c.*

(11.) § Note that a woman who was tenant was essoined as being on the King's service "because she is the nurse of Richard the son of our Lord the King Edward."—*Thorpe*. It is sufficiently of record that the King has no son Richard, wherefore we pray that the essoin be quashed.—HILLARY. The essoiner can not be party to try this.—*Thorpe*. Then we pray

"verunt, culpabiles fuerunt de
 "transgressionibus, prædictis, ad
 "damnum ipsius Willelmi ducentarum
 "librarum, per quod consideratum
 "fuit per prædictos Justiciarios
 "ibidem quod idem Willelmus
 "recuperaret versus eundem
 "Johannem et alios qui placitaverunt
 "damna sua prædicta, et quod
 "idem Johannes et alii caperentur.
 "Et postea idem Willelmus
 "secutus fuit breve domini Regis
 "sub testimonio Johannis de
 "Shardelowe unius Justiciariorum,
 "&c. tunc Vicecomiti Comitatus
 "prædicti directum de fieri faci-
 "endo de terris et catallis præ-
 "dictorum Johannis atte Welleheved
 "et aliorum qui inventi fuerunt
 "culpabiles, &c. damna sua præ-
 "dicta, &c., per

"quod idem Vicecomes liberavit
 "ei bona et catalla prædicta, de
 "quibus idem Johannes jam ques-
 "tus est, quæ apreciata fuerunt
 "ad quadraginta et octo solidos
 "tres denarios et unum obolum,
 "in parte solutionis damnorum
 "prædictorum. Et sic dicit quod
 "ipse recepit bona et catalla ex
 "liberatione Vicecomitis in forma
 "prædicta, unde petit judicium si
 "prædictus Johannes atte Wellehe-
 "ved injuriam seu transgressionem
 "in persona ipsius Willelmi assignare
 "possit, &c. Et prædicti Thomas de
 "Eston et alii dicunt quod ipsi fuerunt
 "servientes prædicti Willelmi Pelys
 "et venerunt cum eo ad recipiendum
 "bona et catalla prædicta ex libera-
 "tione Vicecomitis ut prædictum est,

Nos. 10, 11.

(10.)¹ § *Scire facias* hors dune note. Le Vi- A.D. 1342.
counte retourna *Scire feci, &c., ad essendum coram* Retourn de
*Justiciariis vestris apud Westmonasterium*³ *ad diem* Vicounte
in brevi contentum ad ostendendum secundum te- "coram
norem istius brevis. Et ceo⁴ retourn fuit challenge *Justicia-*
pur ceo qil serroit a supposer qe la partie ad jour *riis ves-*
devant les Justices ROGER⁵ HILL. qest chief Justice, *tris*"
gar ceo fuit soun bref qe issit a Vicounte.—Et *agarde*
obstante le retourn fuit agarde bon, gar⁶ cest le *bon*²
bref le Roi, tut soit il desouth la tesmoignance de [Fitz.
Justice. *Retourne*
del Vi-
count, 79.]

(11.)⁷ § *Nota* qune femme tenante⁹ fuit essone Esone de
de service le Roi *quia nutria Ricardi*¹⁰ *filiu domini* service le
*Regis Edwardi.*¹¹—*Thorpe.* Il est¹² assez de record Roi pur
qe le Roi nad nule fitz Richard, par quei nous prioms une femme
qe lessone soit quasse.—HILL. Lessoneour¹³ ne poet par cause
estre partie a ceo trier.—*Thorpe.* Donques prioms qe *quia nu-*
[Fitz,
Essone,
164.]

"absque aliqua injuria seu trans-
gressionem eidem Jobanni contra
pacem Regis faciendam, &c." John atte Welleheved replied
"quod predicti Willelmus Peliz
et alii, vi et armis, contra pacem
Regis, et de injuria sua propria,
ceperunt et asportaverunt bona
et catalla sua predicta, absque
hoc quod eadem bona et catalla
eidem Willelmo per Vicecomitem
virtute executionis predictæ li-
berata fuerunt, ut superius alle-
gatum est. Et hoc petit quod
inquiratur per patriam." Issue
was joined thereon. The record
ends with the award of the *Venire*.

¹ From T., L., 16,560, 25,184,
and Harl.

² The marginal note, as printed,
is from 25,184 alone. In T., L.,
and Harl., it is *Scire facias*; in
16,560, *Retourn*.

³ The words *apud Westmonaste-*
rium are from L. alone.

⁴ T., cele.

⁵ Harl., *Rokele*.

⁶ The words from gar to the end
are from 25,184 alone, the other
MSS. substituting "&c."

⁷ From T., L., 16,560, 25,184,
and Harl.

⁸ The words of the marginal note
subsequent to *essone* are from
25,184 alone, except *de service le*
Roy, which occur also in 16,560.

⁹ *tenante* is from 25,184 and
Harl. alone.

¹⁰ *Ricardi* is omitted from
25,184.

¹¹ L., &c., instead of *filiu domini*
Regis Edwardi.

¹² 25,184, *ad idem*, instead of *il est*.

¹³ Harl., *le essoneour*; L., *lessone*;
25,184, *le somonour*.

No. 12.

A.D. 1342. that our exception be entered.—HILLARY. For what purpose? For if the King will warrant the essoin at another day that is sufficient; and, if not, and if the woman make default at another day, you will have only the *Petit Cape*.—And, notwithstanding, the exception was entered.

Prayer to be admitted to defend, &c. And note:—The intention of the Court in this case was expressly that they should be admitted, had there not been the nonsuit of the demandant.

(12.) § Note that three infants under age, on the default of the tenant who held by a lease from their ancestor, whose heirs they were, prayed to be admitted; and the prayer was counterpleaded on the ground that the lessor granted the reversion over to another for term of life, to whom the tenant attorned, and so the immediate reversion was in a person other than those who prayed to be admitted.—*Thorpe*. He admits the reversion of the fee simple to be ours, and even if the other were tenant and made default, we should be admitted, and it would be for us, and no other, to exact the penalty for waste, because the right belongs to us; judgment.—*Gayneford*. He to whom the immediate reversion belongs should be admitted, and not you; and by the manner of the plea the fact must be held to be such as we have alleged.—

No. 12.

nostre challenge soit entre.—HILL. A quei faire? Qar A.D. 1342. si le Roi voet garrantir¹ lessone a un altre jour ceo suffit; et, si² ceo noun, si la femme face defaute a un altre jour, vous naverez forsque petit *Cape*.—Et *non obstante* le challenge fuit entre.

(12.)³ § *Nota* qe iij enfauntz⁴ deinz age, par defaute del tenant qe tynt du lees lour⁵ auncestre, qi heirs ils sount, prirent⁷ destre resceu; et fuit contreplede pur ceo qe le lessour graunta la reversion outre a un altre a terme de vie, a qi le tenant est attourne, et issint la reversion immediate a un altre qe a ceux qe prient.⁸—*Thorpe*. Il conust la reversion de fee simple estre a nous, et mesqe lautre fuit tenant et fist defaute, nous serroms resceu, et a nous serreit⁹ de¹⁰ punir¹¹ le wast, et a nul altre, pur ceo qe le droit est a nous; jugement.—*Gayn*. Celuy a qi la reversion appent immediate serroit resceu et noun pas vous; et par la manere de plee il covient tener le fait estre tiel come nous avoms allegge.—HILL.¹² Noun

Priere
destre
resceu a
defendre,
&c. *Et nota, intentio Curie fuit expresse quod in isto casu ils ussent este resceu, si nüst este la noun-suyte le demandant.*⁴

¹ 25,184, granter; the word is omitted from L.

² Si is omitted from L.

³ From T., L., 16,560, 25,184, and Harl.

⁴ The words of the marginal note subsequent to priere destre resceu are from 25,184 alone. In Harl. they are pur un enfant deinz age, oue la reversion immediate fut allegge en autri persone. Et opinion fut qil fut receivable, par quei le demandant ne poursuit point. In L. the marginal note is En un prier destre resceu fust contreplede (pur ceo qe les tene-ments furent lesez a un altre a terme de sa vie, la remeyndre a un altre a terme de sa vie) pur ceo

qe lestat cely en la reversion ne comensa point tanqe apres la mort laltre tenant a terme de vie. *Et non allocatur*; mes il fut receu, sicome pluis pleygnement apiert en cest plee. *Et hoc bene, &c.*

⁵ Harl., un enfaunt, instead of iij enfauntz.

⁶ Harl., son.

⁷ Harl., heir il est, pria, instead of heirs ils sount, prirent.

⁸ All the MSS. except L., cely, cesty, or cestui, qe prie, instead of ceux qe prient.

⁹ The words a nous serreit are omitted from Harl.

¹⁰ L., ore de.

¹¹ L., punyer; Harl., puniere.

¹² L., Herle.

No. 13.

A.D. 1342. HILLARY. Not by those who pray to be admitted, because they are under age; but if he abide there, and will not plead anything else in judgment, what you allege must be held as not denied.—PARNING. One who has only a freehold in the reversion, and who perhaps will never have any thing more, is not in a position to be admitted, because one who had a fee tail in reversion was ousted from the admission by judgment.—*Gayneford*. He was in remainder; not so here.—PARNING. Their admission is to the advantage of the person to whom the reversion would be immediately, and they would be disinherited if they were not admitted; and, if they were admitted, they would save every estate, and they might grant the reversion, and have a writ of Waste, and enter upon an alienation being made in fee.—And afterwards the demandant *non pros*.

Entry *sur disseisin*, where a writ issued to the Sheriff to enquire as to damages, and seisin was awarded because the tenant departed in contempt of Court.

(13.) § Entry in the *post* for a disseisee against one who departed in contempt of Court.—*Thorpe* prayed a writ to the Sheriff to enquire as to damages.—HILLARY. The Statute¹ purports that in an assise the damages are to be apportioned, in case the disseisor be insufficient, and that each is to answer for his own time.—*Thorpe*. Neither that process nor that course can hold upon this writ, for you can not award damages against anyone but a party, and it is right that the disseisee should be favoured.—HILLARY. Why should you not have brought the assise against all?—*Thorpe*. Perhaps I can not have an assise by reason

¹ 6 Edw. I. (Gloucester) c. 1.

No. 13.

pas de ceux qe prient,¹ qar ils sont² deinz age; A.D. 1342.
mes sil demoerge la, et ne voille altre chose dire en
jugement, il covient tener ceo qe vous alleggez nynt
dedit.—PARN. Celuy qe nad qe³ fraunctenement en
la reversion, et qe jammes navera rien par cas nest
pas resceyvable, qar cely qe avoit fee taille en re-
version⁴ fuit ouste de la resceite par agard.—*Gayn.*
Cely fuit en le remeyndre; non⁵ sic hic.—PARN. Sa
resceite est en avantage de celuy a qi la reversion
serroit immediate, et⁶ il serroit desherite sil ne fuit
resceu; et sil fuit⁷ resceu⁸ il sauvereit⁹ chesqun
estat, et il purroit graunter la reversion, et avereit
bref de Wast, et entrereit¹⁰ sur lalienacion fait en fee.—
Et postea petens non est prosecutus.

(13.)¹¹ § Entre en le *post.* pur le disseisi vers un qest
departi en despit de la Court.—*Thorpe* pria bref a
Vicounte denquere des damages.—HILL. Statut voet¹²
qe en assise damages soient proporcionnes, en cas qe
le disseisiour ne soit pas suffisaunt, et qe chesqun
respoigne de soun temps.—*Thorpe.* Cel proces ne
cours¹⁴ ne poet pas tenir en ceo bref, qar vos ne poez
agarder damages vers nul fors qe vers celuy qest
partie, et il est resoun qe le disseisi soit favore.—HILL.
Pur¹⁵ quei nussez porte lassise vers touz?—*Thorpe.*
Par cas assise me¹⁶ faut¹⁷ par mort de disseisiour¹⁸ et
Entre sur disseisine, ou bref issit au Vicounte denquere des damages, et seisin agarde pur ceo qil departi en depite.¹² [Fitz. *Damage*, 82.]

¹ All the MSS. except L., celuy qe prie.

² All the MSS. except L., il est, instead of ils sont.

³ qe is omitted from L.

⁴ T. and 25,184, la taille.

⁵ 16,560, nota.

⁶ L., qar.

⁷ 16,560 and Harl., soit.

⁸ The words et sil fuit resceu are omitted from 16,560.

⁹ T., salvera; L., sauvereit; 25,184, sauvereit; Harl., save-
roit.

¹⁰ Harl., entrast.

¹¹ From T., L., 16,560, 25,184, and Harl.

¹² The words of the marginal note subsequent to disseisine are from Harl. alone. In 16,560 the note is Damages en bref dentre.

¹³ L., volt.

¹⁴ T., cours ne proces.

¹⁵ Pur is from L. alone.

¹⁶ 16,560, disseisour moy, instead of assise me.

¹⁷ 25,184, Assise par cas ne faute, instead of Par cas assise me faut.

¹⁸ The words par mort de dissei-
sour are from T. alone.

Nos. 14, 15.

A.D. 1342. of the death of the disseisor, and the Statute gives damages for the disseisee upon a writ of Entry.—And afterwards HILLARY awarded a writ to the Sheriff to enquire as to damages, &c.

Mesne.
Note the
judgment.

(14.) § On a writ of Mesne the defendant made protestation as to the quantity of the services, and admitted the liability to acquit, and said that the plaintiff was not distrained by his default; ready, &c.—And the other side said the contrary.—And judgment was given immediately on the liability to acquit and before the averment was taken, though perchance the verdict will pass against the plaintiff.

Covenant
between
prede-
cessors on
both sides.

(15.) § The Prior of Wartre brought a writ of Covenant against the Abbot of Fountains, on the

Nos. 14, 15.

statut doune damages en bref dentre pur¹ le disseisi. A.D. 1342. Et puis HILL. agarda bref a Vicounte denquere des *Judicium*.² damages, &c.

(14.)³ § En bref de Meen⁶ le defendant fist pro-
testacion de la quantite⁷ des services, et conust lacquit-
ance,⁸ et dit qe nynt destreint par sa defaute; prest,
&c.—*Et alii e contra*.—Et le jugement fuit rendu
sur lacquittance⁹ tauntoust avant laverement pris quele
par cas passera countre le pleintif.¹⁰

Mene.⁴
Nota
judicium.⁵
[Fitz.
Mesne,
31.]

(15.)¹¹ Le Priour de Wartre¹² porta bref de covenant
vers labbe de Fontaignes¹³ qe atort ne luy tynt

Cove-
naunte
entre pre-
decessurs
dune part
et daltre.

¹ L., par.

² *Judicium* is from Harl. alone.

³ From T., L., 16,560, 25,184, and Harl.

⁴ T., *De medio*.

⁵ The words *Nota judicium* are from 25,184 alone.

⁶ The words En bref de Meen are omitted from T.

⁷ L., qitance.

⁸ L. and Harl., la quantite.

⁹ Harl., la quantite.

¹⁰ The record of this case is probably that which occurs in the *Placita de Banco*, Easter, 16 Edw. III., R^o. 152. It there appears that the action was brought by John de Sonynghulle against Robert le Fitz Payn "de placito" "quod acquietet ipsum de servitio" "quod Johannes de Bello Campo" "ab eo exigit de libero tenemento" "suo quod de prefato Robertc" "tenet in Frome-Bonemlestone," "unde idem Robertus qui medius" "est inter eos eum acquietare" "debet, &c." The count follows to the same effect. The defendant "non potest dedicare quin ipse" "debet acquietare predictum

"Johannem de Sonynghulle ver-
sus quoscunque, &c., pro eisdem
servitiis, &c. sed bene defendit
quod ipse non distrinxit pro
defectu acquietantis ipsius Ro-
berti, et de hoc ponit se super
patriam. Et Johannes de Sonyng-
hulle similiter. Ideo considera-
tum est quod predictus Robertus
acquietet ipsum Johannem, &c."
The award of the *Venire*, as to the
issue on the distress, follows.

¹¹ From T., L., 16,560, 25,184, and Harl., but corrected by the record *Placita de Banco*, Easter, 16 Edw. III., R^o. 132.

¹² T., Ware; 25,184, Bartoue. It appears by the record that the writ of Covenant was brought by Richard, Prior of Wartre, against the Abbot of Fountains, in respect of a covenant made between John, formerly Prior of Wartre, predecessor of the existing Prior, and Adam, formerly Abbot of Fountains, predecessor of the existing Abbot.

¹³ T., Founteyns; 16,560, Founteins; 25,184, Fonteyns.

No. 15.

A.D. 1342. ground that tortiously he did not perform to the Prior the covenant made between his predecessor and the predecessor, &c. in respect of the eighth part of the soil and waste of that Abbot to be approved in Wheldrake; and tortiously for this, that the predecessor of the Prior brought an assise of Novel Disseisin in the time of King Edward the grandfather, on a certain day, in a certain year and place, before the Justices assigned to take assises in the county of York, and complained that he was disseised of the eighth part of the soil and waste approved in Wheldrake, and of estovers and other things, when an agreement was made between them, for themselves and for their successors, before the said Justices, in a certain form, that is to say, that the then Abbot granted, for himself and for his successors, to the then Prior and his successors that whenever the said Abbot or his successors should approve waste or soil in Wheldrake, the said Prior and his successors should have the eighth part of the soil and waste approved and to be approved. And

And observe that by the writ it was supposed that there was breach of covenant in respect of a matter in the future, and this was adjudged good, because the writ was founded on a specialty which so purported, &c.; but by the count it was declared how there was breach of the covenant by matter which was now certain.

No. 15.

covenant fait entre soun predecessour et le predecessour &c. del uttime² partie del soil et wast mesme celuy Abbe a³ appruer en Queldrig,⁴ et pur ceo atort qe le predecessour le Priour porta une assise de novele disseisine en temps le Roi E. ael, certain jour, an, et lieu, devant les Justices as assises prendre assignes en le counte de Everwik,⁵ et se pleynt estre disseisi del uttime⁶ partie del soil et⁷ wast⁸ approwate⁹ en Q.,¹⁰ et des estovers et altres choses, ou acorde se prist entre eux, pur eux et pur lour successours, devant les dites Justices, par certain fourme,¹¹ saver¹² qe Labbe¹³ qe adonques fust graunta, pur luy et pur ses successours, a Priour¹⁴ qe adonques fuit et a ses successours qe a tout foitz qe le dit Abbe ou ses successours approwereint¹⁵ de wast ou¹⁶ soil en Q.,¹⁷ qe le dit Priour et ces successours averent la oetisme¹⁸ partie del soil et wast approwe¹⁹ et apprower.²⁰ Et

A.D. 1342.

Et vide
par le bref
fuit sup-
pose cove-
nant en-
freint
de chose qe
fuit avenir,
et agarde
bon. *quia*
fendu sur
un espe-
cialte qe
iasint
voleit, &c.;
mes par
count fuit
desclarre
coment le
covenant
fuit en-
freint par
chose qe
ore fuit en
certain.¹
[Fitz.
Abbe, 13.]

¹ The marginal note subsequent to the word Covenant first occurring is from 25,184 alone.

² T., viij.; L., 16,560, and Harl., vintisme.

³ a is from 25,184 alone.

⁴ L., 16,560 and Harl., terre et soil apprower en le wast et soil de B., instead of soil et waste mesme celuy Abbe a appruer en Queldrig.

⁵ The words en le counte de Everwik are omitted from L. 16,560, and Harl.

⁶ 16,560, oetisme; T., viij; L., uiteisme; Harl., vintisme.

⁷ The words del soil et are omitted from Harl.

⁸ The words et wast are omitted from 25,184.

⁹ approwate is from Harl. alone.

¹⁰ L. and Harl., B.

¹¹ 25,184, *forme*; Harl., *fine*;

the word is omitted from L. and 16,560.

¹² L., 16,560 and Harl., *ai*.

¹³ All the MSS. of Y.B. except Harl., le Priour.

¹⁴ All the MSS. of Y.B., except Harl., al Abbe, instead of a Priour.

¹⁵ T., *sapruent*; L. and 16,560, *saproweront*, instead of *approwereint*.

¹⁶ 16,560, *en le*.

¹⁷ L., *en moult*; 16,560, &c., instead of *en Q.*

¹⁸ L. and Harl., *vintisme*; T., *vij*;^{ms}; 25,184, *uptime*.

¹⁹ The words del soil et wast approwe are omitted from all the MSS. of Y.B. except T., and 25,184.

²⁰ The words et apprower are omitted from all the MSS. of Y.B. except T.

No. 15.

A.D. 1342. the Prior afterwards counted how divers Abbots, in the times of divers Kings, and of divers Priors, had approved to themselves divers parcels of wood, and had made thereof arable land, and of moor, and had made thereof meadow, and he stated the total number of acres with certainty; and he said that this Prior had often prayed this Abbot to perform this Covenant, and the Abbot had refused this to him, &c. And he produced an exemplification under the King's seal of the said record, which purported that such assise was brought *de octava parte appruamenti in solo vasti, et sextadecima quercu in Queldrige, et estoveriis, &c.* And afterwards the Prior withdrew; wherefore he and his pledges were in mercy; and after the non-suit this agreement was made between the Abbot and the Prior as above.—*Rokel.* Judgment of the writ; because the total quantity of the land approved should be stated with certainty, and the writ should be brought for that, and the covenant should be supposed to be broken in that manner with certainty, and not in an uncertain manner, as for an eighth part.—This exception was not allowed, because the soil is not to be recovered by this writ.—And afterwards exception was taken to the writ because it was in the words *quod teneat conventionem factam de octava parte vasti et soli appruandorum* in Wheldrake, which words can only refer to that which is yet to be approved, and not to that which has been approved, and it can not be supposed that there has been breach of covenant in respect thereof, because it is contingent on a future

No. 15.

puis apres counta coment divers Abbes, en temps de A.D. 1342. divers Rois, et divers Priours, savoint approwe de divers parcells du bois, et fait de ceo terre arrable, et¹ de more, et² fait de ceo³ pree, et assumma⁴ les acres en certain; et dit qe cestuy Priour ad sovent prie le covenant vers cestuy Abbe, et il luy ad⁵ dedit, &c. Et mist avant exemplificacion del dit record souz le seal le Roi, qe voleit qe tiele assise fuit porte [*de octava parte appruamenti in solo vasti, et sextadecima⁶ quercu in Queledridge⁷ et estoveriis, &c.* Et puis le Priour se retret; par quei luy et ses plegges en la mercy⁸]; et apres la nounsuyte cele acorde⁹ se prist entre Labbe et le Priour, *ut supra*.—*Rokel.*¹⁰ Jugement du bref; qar la quantite de la terre approwe serroit assumme¹¹ en certeyn, et de ceo serroit le bref porte, et le covenaut¹² serroit suppose estre enfreynt issint en certain,¹³ et noun pas en noun certain, come par oitisme¹⁴ partie.—*Non allocatur*, qar le soil nest pas a recoverir par ceo bref.—Et puis fuit le bref challenge qe volet *quod teneat conventionem factam*¹⁵ *de octava parte vasti et soli*¹⁶ *appruandorum* en Queldrige,¹⁷ queles paroules ne pount referer fors qe a ceo qest unquore apprower, et ne mye a ceo qest approwe, de quei covenant ne puit estre suppose enfreynt, *quia*

¹ et is omitted from T.

² et is omitted from T. and Harl.

³ The words de ceo are omitted from T. and L.

⁴ T. and 25,184, assigna.

⁵ T., lad, instead of luy ad.

⁶ 25,184, *sexaginta*.

⁷ T., Q.

⁸ For the words between brackets are substituted in L., 16,560, and Harl., the words *ut supra*, et le pleintif noun suy, to which are added, in 16,560, the words en laccise.

⁹ Harl., recorde.

¹⁰ 25,184, *Kels*.

¹¹ T., somme.

¹² T., contract; the words et le covenaut are omitted from L.

¹³ T., de cele issue, instead of issint en certain.

¹⁴ 16,560, utisme; L., vintisme; 25,184, uptime; Harl., vintime.

¹⁵ The words *quod teneat conventionem factam* are omitted from L., 16,560, and Harl.

¹⁶ L., *similiter*.

¹⁷ T., Q.; L., Ketering; 16,560 and Harl., Keterig.

No. 15.

A.D. 1342. act; for the writ should be in the words *de octava parte, &c., appruatorum* because that which was uncertain at the time of the covenant was by the approvement afterwards made certain, and that maintains the action.—And this exception was not allowed, because the words of the writ will be in accordance with the specialty, and the fact which has occurred shall be declared by the count; and so it is here.—*Rokel*. You see clearly how the covenant was made in respect of a matter different from that which was in the plea; for the covenant was *de octava parte soli et vasti appruandorum*, and the plaint in the assise was *de octava parte appruamenti in solo vasti*, and so that agreement and covenant were taken without warrant. Besides, after the nonsuit was recorded, the Justices had no power to make a record of any covenant, for their power was extinct after the judgment was given: and even if the covenant were binding, by reason of the assent of him who was party, it could not bind his successor; judgment whether by anything which he has said he can bind as to this covenant.—*Thorpe*. Since you plead with uncertainty, in such a manner that a party can not have a certain issue, judgment; for by a part of your plea you show that this can not be of record, and by the rest you show that even though it were of record, it does not charge the successor; and you ought to abide judgment with certainty on a matter which lies in law as on a matter which lies in fact.—*Gaynesford*. We tell you that what you produce for a specialty does not

No. 15.

contingens de futuro; qar¹ le bref serroit *de octava* A.D. 1342.
*parte, &c. appruatorum*² qar ceo qe fuit en noun
 certeyn al temps del covenant par lapprowement apres
 fut mys en certeyn, et ceo mayntient laccion.—*Et non*
allocatur, qar les paroules del bref³ serrount accord-
 aunes a lespecialte, et le fait avenü serra declare par
 counte;⁴ *et ita est hic*.—*Rokel*. Vous veez bien coment
 le covenant se⁵ prist daltre chose qe ne fuit en pleë;
 qar le covenant fuit *de octava parte soli et vasti*
appruandorum, et la pleynte en lassise⁶ fuit *de*
*octava parte appruamenti*⁷ *in solo vasti*,⁸ et issi
 cel accorde⁹ et covenant pris saunz garrant. Ovesqe
 cella, apres la nounsuyte recorde, Justices navoint pas
 poer de faire record de nul covenant, [qar lour poair
 fuit esteint apres jugement rendu];¹⁰ et tut¹¹ fuit ceo
 chargeaunt pur lassent celui qe fuit partie, ceo ne¹²
 poet lier soun successour; jugement¹³ si par rienz qil
 ad dit nous puisse¹⁴ a ceo covenant lier.—*Thorpe*. Del
 houre qe vous pledez en noun certeyn, [a quei partie
 ne poet aver certeyn issue,]¹⁵ jugement; qar par partie
 de vostre pleë vous proves qe ceo ne poet estre record,
 et par le remenant proves vous, tut fuit ceo record,
 qe ceo ne charge pas successour; et si avant devez
 demorer en certeyn de chose qe chiet en ley com de
 chose qe chiet in fait.—*Gayn*. Nous vous dioms qe
 ceo qe vous mettes avant pur especialte ne prove pas

¹ qar si.² 16,560, *appruandorum*.³ The words del bref are omitted from L.⁴ 25,184, tut; Harl., tout.⁵ L., soit.⁶ The words en lassise are omitted from L.⁷ L., *approuwanti*; 25,184, *approuwanti*.⁸ L., 16,560, and Harl., et *vasto*.⁹ 16,560, records.¹⁰ The words between brackets are from T. and 25,184 alone.¹¹ L. and 16,560, dount; Harl., tort.¹² L. and 16,560, com, instead of ceo ne.¹³ jugement is omitted from Harl.¹⁴ T., poet.¹⁵ The words between brackets are omitted from 16,560.

No. 16.

A.D. 1342. prove your action, for it is neither matter of record nor a specialty made with the assent of the Convent, &c.—*Thorpe*. It is an ancient record, and the law then was such that Justices of Assise and in Eyre took such agreements and fines, and they were and are executory.—*Gayneford*. That was never law except in respect of matter which was in a plea before them; but in this case their power ceased after the judgment.

Account brought against two, in which one pleaded that at the time of the receipt he was under age, and the other demanded judgment of the writ because the plaintiff had taken an action against him together with one from whom he

(16.) § Account against two receivers.—*R. Thorpe*. As to one of them, he is under age, and he was so at the time of the receipt; judgment. And as to the other, judgment—in respect of the writ which is taken against him and another in common—whether he ought to be put to answer alone.—*Pole*. As to the one, who says that he is under age (which matter should be tried by inspection of the Court), and also that at the time of the receipt he was under age (which matter would be tried by averment to the country), and who thus offers a double issue, judgment, and we pray the account.—And as to him, *R. Thorpe* was put to hold to one issue in certain, and tendered the averment that he was under age at the time of the receipt.—And the other side that he was of full age.—And as to the other [said *Pole*] he does not falsify our writ,

No. 16.

vostre accion, qar ceo nest ne chose de record ne A.D. 1342.
 especialte fait¹ dassent de Covent, &c.—*Thorpe*. Ceo
 est² un³ auncien record, et tiel fuit la ley adonques qe
 Justices as assises⁴ et de Eire⁵ pristrent⁶ tieles
 accordes⁷ et finas, et furent et sount executoires.⁸—
Gayn. Unques ne fuit ceo ley forsque de chose qe fuit
 en plee devant⁹ eux; mes en ceo cas apres jugement
 lour power cessa.¹⁰

(16.)¹¹ § Accompte vers deux resceyvours.—*R. Thorpe*. Acompte
 Quant a lun il est deinz age, et fuit al temps de la porte vers
 resceite; jugement. Et, quant al autre, jugement du ij, ou lun
 bref qest pris en comune vers luy et un altre, sil soulda qe a
 deyve estre mys de respondre.—*Pole*. Quant a lun temps de
 qe dit qil est deinz age, quele chose covient estre trie la receite
 par inspeccion de la Court,¹² et auxi qe a temps de la il fust de-
 resceite qil fuit deinz age, quele chose¹³ voet estre trie deinz age,
 par averement du pais, et issi double issue, jugement, et lautre
 et prioms laccompte.—Et, quant a luy, il fuit mys a demanda
 tener a lun issue en certeyn, et tendist daverer qe jugement
 deinz age al temps de la resceite.—*Et alii* qe de pleyn de bref pur
 age.—Et quant al autre il ne fauxe pas nostre bref, ceo qil ad
 pris sac-
 cionovesqe
 ly de quey
 il ne put
 aver la-
 compte; et
 il fust

¹ fait is omitted from 16,560.

² T. and Harl., cest, instead of ceo est.

³ un is omitted from Harl.

⁴ T., en assise; 16,560, dassise, instead of as assises.

⁵ T., oier et terminer, instead of de Eire.

⁶ Harl., presenterent.

⁷ 25,184, recordes.

⁸ T. and Harl., executes.

⁹ Harl., enpledant entre, instead of en plee devant.

¹⁰ The record of this case, without which the report would have been practically unintelligible, being of

great length, is printed in the Appendix.

¹¹ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edw. III., B^o. 129. It there appears that the action was brought by the Abbot of Croyland against Richard le Taylour, of Whaplode, [de Quappelade], and Robert his brother.

¹² The words de la Court are from L. alone.

¹³ chose is omitted from all the MSS. but T., and quele is omitted from L.

No. 16.

A.D. 1342. for we can not have any other writ, because if we were
 could not to bring our writ against him alone, he would say that
 have an account; he was receiver in common with another who is alive,
 and he was and he would abate our writ, and it would not lie in our
 compelled to answer mouth to say that he was under age.—*R. Thorpe*. Then
 alone, as allow this writ to abate by the non-age of the other,
 appears in the record thereof will maintain another writ
 this plea. against us alone.—*HILLARY*. Answer to this writ.—
Thorpe. We were keeper of his marsh, and we dug
 turves and sold them, and we received £40 for which
 we accounted to him, and in respect of this another
 writ would lie, that is to say, one applicable only to a
 bailiff, *de tempore quo fuit ballivus*, &c.; judgment of
 the writ.—*Pole*. You do not answer anything to this
 writ. When we bring a writ against you as bailiff, then
 what you allege will be a good answer.—*Thorpe*. Will
 you surmise against us any receipt other than that
 which we have admitted?—*HILLARY*. He has done
 that by writ and by count.—*Thorpe*. We received as
 above; and by way of protestation we tell you that
 for that we have accounted, without this that we were
 otherwise his receiver; ready, &c.—*Pole*. You were
 our receiver as we have counted; ready, &c.—And note
 that *Thorpe's* plea will be entered.

No. 16.

gar altre bref¹ ne poms aver,² qar si nous portassoms⁴ A.D. 1342.
 bref vers luy⁵ soul, il dirreit qil fuit resceyvour ove chace de
 un altre en comune qest en pleyne vie, et abatereit resoundra
 nostre bref, et ceo ne girreit pas en nostre bouche qe soul, ut
 celuy fuit deinz age.—*R. Thorpe*. Soeffres donques qe patet in
 ceo bref abate par noun age lautre, et cel record isto pla-
 meynteindra lautre bref vers nous soul.—*HILL*. Res- cito.¹ [Fitz.
 poncez a ceo bref.—*Thorpe*. Nous fumes gardeyn de Accompt,
 soun marays, et fowames tourbes et vendimes, et 52.]
 resceumes xl li. de quei nous accomptames a luy, de
 quei altre bref girreit, saver de baille,⁶ *de tempore quo*
fuit ballivus, &c.; jugement du bref.—*Pole*. Vous ne
 respondez rien a cesty bref. Quant nous portoms bref
 vers vous come baillif, donques serra ceo bon respons
 qe vous alleggez.—*Thorpe*. Volez⁷ surmettre a nous
 altre resceite qe nous avoms conu?—*HILL*. Ceo ad il
 fait par bref et par⁸ counte.⁹—*Thorpe*. Nous res-
 ceumes *ut supra*; et pur protestacion vous dioms qe
 de ceo nous avoms acompte, saunz ceo qe autrement
 fumes soun resceyvour; prest, &c.—*Pole*. Nostre
 resceyvour com nous avoms counte; prest, &c.—*Et*
nota qe le pleé *Thorpe* serra entre.¹⁰

¹ The marginal note subsequent to the word *Acompte* is from L. alone. There are notes to the same effect, but shorter, in 25,184 and Harl.

² The words qar altre bref are omitted from Harl.

³ 16,560, aver ne puisee, instead of ne poms aver; Harl., averer, instead of aver.

⁴ L., portames; all the other MSS., portassoms.

⁵ 25,184, lun.

⁶ The words de baille are omitted from all the MSS. but T.

⁷ Harl., voleit.

⁸ par is from L. alone.

⁹ 16,560, tut; 25,184, eompte.

¹⁰ According to the record of this case, "Abbas que-
 " ritur quod cum prædicti Ricardus
 " et Robertus extiterunt receptores
 " denariorum ipsius Abbatis a die
 " Lunæ proximo post Festum
 " Paschæ anno regni domini Regis
 " nunc decimo usque ad Festum
 " Sancti Martini anno regni ejus-
 " dem domini Regis nunc quarto
 " decimo, et per idem tempus re-
 " cepissent de denariis ipsius Abba-
 " tis apud Croylande centum libras,
 " videlicet, per manus Rogeri Tygo
 " centum solidos, et per manus Ra-
 " dulf Chaumpeneys quatuor libras,
 " et per manus

No. 17.

A.D. 1342. (17.) § *Cui in vita*,¹ the words of the writ being:—
Cui in vita “into which the tenant has not entry *nisi post dimis-*
 in the *post* *sionem quam A. quondam vir D. consanguineæ* of

¹ This action would, at a later period, have been called *Sur cui in vita*.

No. 17.

(17.)¹ § *Cui in vita*, en les queux le tenant nad A.D. 1342.
entre nisi post dimissionem quam A.² quondam vir D.³ *Cui in vita*
en le post

" aliorum diversorum hominum
" super compoto onerandorum to-
" tum residuum prædictarum cen-
" tum librarum, ad mercandisandum
" et commodum ipsius Abbatis inde
" faciendum, et compotum ei cum
" requisitus fuerit reddendum, præ-
" dicti Ricardus et Robertus compo-
" tum inde ipsi Abbati nondum
" reddiderunt sed hucusque reddere
" contradixerunt et adhuc contra-
" dicunt. Unde dicit quod deteriora-
" tus est et damnum habet ad valen-
" tiam ducentarum librarum. Et
" inde producit sectam.

" Et Ricardus et Robertus
" veniunt et defendunt vim et
" injuriam quando, &c. Et idem
" Robertus dicit quod ipse tempore
" quo prædictus Abbas supponit
" ipsum fuisse receptorem denario-
" rum ipsius Abbatis simul cum
" prædicto Ricardo, &c., fuit infra
" ætatem. Et hoc paratus est veri-
" ficare. Unde petit iudicium si ipse
" de aliquo compoto reddendo de
" tempore prædicto onerari debeat,
" &c.

" Et Ricardus dicit quod ipse
" per totum tempus prædictum
" simul cum prædicto Roberto fuit
" fodiator turbarum ipsius Abbatis
" in marisco suo de Croylande,
" et per idem tempus, per præcep-
" tum ipsius Abbatis, vendidit
" turbas ibidem ad valenciam quad-
" raginta octo librarum, et denarios
" illos solvit ipsi Abbati, in quo
" casu competit breve de compoto
" de tempore quo fuit ballivus suus,
" &c., absque hoc quod ipse aliquo
" alio modo fuit receptor denario-
" rum ipsius Abbatis prout idem
" Abbas superius versus eum nar-

" ravit. Et hoc paratus est verificare,
" &c., unde petit iudicium, &c.

" Et Abbas dicit quod prædictus
" Robertus per tempus prædictum
" fuit plenæ ætatis, et non infra
" ætatem, et quod prædictus Ricar-
" dus simul, &c., fuit receptor de-
" nariorum ipsius Abbatis per tem-
" pus prædictum, prout ipse superius
" versus eum et prædictum Roben-
" tum narravit. Et hoc petit quod in-
" quiratur per patriam. Et Ricardus
" et Robertus similiter. Ideo præ-
" ceptum est Vicecomiti quod venire
" faciat hic a die Sancti Michaelis in
" xv dies xij, &c., per quos, &c., et
" qui nec, &c., ad recognoscendum,
" &c. quia tam, &c. Et super hoc
" certain persons "manuceperunt præ-
" dictos Ricardum et Robertum
" habendi corpora eorum hic ad
" præfatum terminum, et ad quem-
" libet diem placiti quousque præ-
" dicta jurata inde inter eos tran-
" sierit et iudicium inde redditum
" fuerit" After
" several adjournments the defen-
" dants failed to appear. The main-
" pternors were to be taken. The
" defendants still not appearing,
" Capiatur Jurata versus eos per
" defaultam, &c."

¹ From T., L., 16,360, 25,184, and
Harl., but corrected by the record
Placita de Banco, Easter 16 Edw.
III. R^o. 82. It there appears that
the action was brought by John
son of Henry de Wyleby against
Richard de Maundeveile.

² As to the real names, and as to
the exact words to which exception
was taken, see the extract from the
record in the note at the end of the
case.

No. 17.

A.D. 1342. the demandant, *cujus heres ipse est, inde fecit W. cui ipsa in vita contradicere non potuit.*—Pole.
 abated because the clause *cui ipsa, &c.* in this writ ought to be placed after the name of the husband in respect of tenements which the husband aliened.
 Judgment of the writ, because by the writ it is supposed that the demandant's ancestor could not gainsay him to whom the alienation was made; for the *cui* is relative, and has relation to the person who is last named, and that is the lessee.—*Gayneford.* The *cui* refers to the husband, and such is the form [of the writ].—*Thorpe.* The *cui* in a writ which is in the *post* shall be before the *inde fecit*, for otherwise it has relation to the lessee and not to the husband; but in the *per* it is otherwise:—*non habet ingressum nisi per A. quondam virum, &c., cui ipsa, &c.,* because the husband is last named. And he shewed other writs in like form, that is to say, *non habet ingressum nisi post dimissionem quam, such an one quondam vir, &c., cui ipsa, &c., inde fecit, &c.*—HILLARY. The clerks of the Chancery say that this writ is not in form; for in a writ conceived in the *post* the *cui ipsa* shall be in the middle of the clause, that is to say as *Thorpe* said above, and in the *per* it shall be at the end; and it is necessary to maintain the form of a writ as well as the matter; wherefore the COURT adjudges that you do take nothing by this writ, but that you be in mercy.

No. 17.

*consanguineæ*² le demandant, *cujus heres ipse est*, A.D. 1342.
inde fecit W.,³ *cui ipsa in vita contradicere non potuit.* ^{abatu pur}
 —*Pole.* Jugement du bref, qar par le bref est suppose ^{ce qe celuy}
 qe launcestre le demandaunt ne pout countredire a ^{clause cui}
 celuy a qi lalienacion fuit fait; qar *cui* est relatif, et ^{*ipsa*, &c.,}
 ad relation a celuy qest dreyn nome, et ceo est⁴ le ^{en cestuy}
 lesse.—*Gayn.* Le *cui* refiert al baroun, et tiele est ^{bref dust}
 la fourme.—*Thorpe.* Le *cui* en le bref qest en le ^{estre mis}
post serra devant le *inde fecit*, qar autrement ad il ^{apres le}
 relation al lesse⁵ et noun pas al baroun; mes en le *per* ^{noun le}
 est il altre,⁶ *non habet ingressum nisi per A. quondam* ^{baroun}
virum, &c. cui ipsa, &c., qar le baroun est dareyn ^{dout le}
 nome. Et moustra altres brefs de tiele fourme, saver⁷ ^{baroun}
non habet ingressum nisi post dimissionem quam ^{laliena.¹}
un tiel⁸ quondam vir, &c., cui ipsa, &c., inde fecit, &c.—
 HILL. Les clerkes⁹ de la Chauncellerie dient qe ceo
 bref nest pas de fourme; qar en bref conceu en le
post le *cui ipsa* serra¹⁰ en mylieu¹¹ la clause, saver ut
Thorpe dixit supra, et en le *per* a la fine; et si avant
 covynt mayntener fourme du bref come matere;¹² par
 quei agarde la COURT qe vous ne preignez rien par ceo
 bref, mes soiez¹³ en la mercy.¹⁴

¹ The words of the marginal note subsequent to the first three are from 25,184 alone. In 16,560, the word challenge is substituted for them.

² T., *consanguineus*; L. and 25,184, *consanguineo*.

³ See note ² on p. 195.

⁴ T., al darrein noun qest; 16,560, 25,184, and Harl., al darrein (dreyn, or derrein) nome qest, instead of a celuy qest dreyn nome et ceo est.

⁵ 25,184, *seffe*.

⁶ Harl., *aterment*.

⁷ L. *videlicet*; Harl., *cest a savoir*.

⁸ 25,184, *unus*, instead of un tiel.

⁹ Harl., *clers*.

¹⁰ T., *serra mys*.

¹¹ L. and 25,184, *mye lieu*.

¹² L., *de matere*.

¹³ L., *ceyez*.

¹⁴ According to the record, exception was taken to the writ, "de eo quod in eodem inseritur talis clausula:—et in qua idem Ricardus non habetingressum nisi post dimissionem quam Willelmus filius Roberti de Norhamptone quondam vir Margeris Foliot consanguineus prædicti Johannis, cujus heres ipse est, inde fecit Eudoni le Fitz Waryn, cui ipsa Margeria in vita sua contradicere non potuit, &c.: ubi

Nos. 18, 19.

A.D. 1343. (18.) § Hugh the son of Hugh the son of Hugh
 Formedon. le Spenser brought a writ of Formedon against the
 Process Earl of Huntingdon and his wife. View having been
 discontinued because a demanded, the process was continued for Hugh the
 defect was more than son of Hugh the son of Hugh. And it was said
 that of a that the process was discontinued, because it was
 letter or a continued for a person other than the demandant; and this
 syllable. can not be amended by the Statute,¹ because it is
 wrong in more than a letter or a syllable.

Attaint for (19.) § Attaint on an inquest in a Formedon which
 husband passed against a wife who was admitted by reason
 and wife, of the default of her husband; and her husband and
 in a case in which the

¹ 14 Edw. III. c. 6.

Nos. 18, 19.

(18.)¹ § Hughe le fitz Hughe le fitz Hughe⁴ A.D. 1342.
 Lespenser⁵ porta bref de⁶ fourme de doun vers le
 Counte de Huntindone et sa femme. La viewe de-
 mande, le proces continue pur Hughe le fitz Hughe
 le fitz Hughe.⁷ Et fuit dit qe le proces est dis-
 continue, qar il est continue pur altre persone qe
 nest demandant; et ceo ne puit estre amende par
 statut, *quia peccat magis⁸ quam in litera vel in
 syllaba.*

Forme de
doun.
Proces dis-
continue²
propter
superplus.³

(19.)⁹ § Atteynt sur un enqueste en¹⁰ fourme de
 doun¹¹ qe passa¹² countre une femme qe fuit resceu
 par la defaute soun baroun; et soun baroun¹³ et luy

Atteinte
pur le
baroun
et sa
femme par
la ou le

"forma brevis in hujusmodi casu
 "est: et in quodam Ricardus non
 "habet ingressum nisi post dimis-
 "sionem quam Willelmus filius
 "Roberti de Norhamptone quon-
 "dam vir Margerie Foliot consan-
 "guineus prædicti Johannis, cujus
 "heres ipse est, cui ipsa Margeria
 "in vita sua contradicere non
 "potuit, inde fecit Eudoni le Fitz
 "Waryn, &c., et unde petit judi-
 "cium de brevi, &c. Et prædictus
 "Johannes non potest hoc dedicere.
 "Ideo consideratum est quod
 "idem Ricardus eat inde sine die,
 "et prædictus Johannes nihil ca-
 "piat per breve suum, sed sit in
 "misericordia pro falso clameo,
 "&c."

¹ From T., L., 16,560, 25,184, and Harl.

² The words Proces discontinue are from 16,560 and 25,184 only.

³ The words *propter superplus* are from 25,184 alone.

⁴ The words le fitz Hughe are not repeated in 25,184.

⁵ Harl., Spenser; T., le Despen-
 ser.

⁶ The words bref de are from L. alone.

⁷ The words le fitz Hughe are omitted altogether from Harl., and they are not repeated in 25,184.

⁸ All the MSS. except T., in plus.

⁹ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter 16 Edw. III. R^o. 123. It there appears that the Attaint was brought by Ralph Bradeghe, and Eva his wife, in respect of a false oath alleged to have been given by jurors in an action brought against Ralph Bradeghe by Henry de Morby and Alice his wife.

¹⁰ 26,184, de; L., en bref de.

¹¹ Though founded on a gift in special tail, the action appears, according to the record, to have been rather a *Cui in Vita* than a *Formedon*.

¹² In L. and 25,184 are added, after the word *passa*, the words *sour enqueste eu une formedoun*.

¹³ The words *et soun baroun* are omitted from 16,560.

No. 20.

A.D. 1342. she brought the writ of Attaint, and assigned the husband made default on the first original writ, and so lost as far as in him lay, and his wife was admitted. false oath in the principal action.—*Blaykeston* took exception to the writ in that it did not lie for the husband, who was not party to the first jury and who lost by his default so far as he could lose.—And this exception was not allowed, because the wife could not have any other writ.—And then general non-tenure on the day when the writ was purchased was alleged, and, if this be found, they made good oath.—*Thorpe*. Fully tenants; and, if this be found, they made false oath; ready, &c., by the Jury.—And so to the Jury.—And so note that non-tenure only does not make an issue by itself.

Detinue of a horse. Note the issue. (20.) § Detinue of a horse delivered to the defendant to keep and to re-deliver the next day to the plaintiff, &c.—*Rokel*. No one detains it in the manner in which he counts; ready, &c.—And the other side said the contrary.—And note that the issue is on the detinue and not on the bailment.

No. 20.

porterent le bref datteynte, et assignerent le faux serement en le principal.—*Blak* challengea le bref qil² ne gist pas pur le baroun, qe ne fuit pas partie al primer jure,³ et qe perdist par⁴ sa defaute en taunt com en luy fut.—*Et non allocatur*, qar la femme ne pout aver altre bref.—Et puis noun tenure fuit allegge general jour de ceo bref purchace, et, si trove soit, ils firent faux serement.—*Thorpe*. Pleyment tenantz; et, si trove soit, ils firent faux serement; prest, &c., par la Jure.⁵—*Et sic ad Juratam*.—*Et sic nota* qe la mountenue ne fait⁶ pas issue soulement.⁷

A.D. 1342.
baroun al
altre origi-
nal fit
defaute, et
issi perdi
quant qen
ly fuit, et
sa femme
resceu.¹
[16 li.
Ass. 5;
Fitz. At-
teint, 25.]
[Fitz.
Nontenure,
14.]

(20.)⁸ § Detenue dune chival baille a garder al defendant et rebailier lendemayn al pleintif, &c.—*Rokel*. Nul ne luy detient¹¹ en la manere qil¹² counte; prest, &c.—*Et alii e contra*.—*Et nota* qe lissue est sur la detenue et noun pas sur le baille.¹³

Detenue
dun chi-
val.⁹ *Nota*
lissu.¹⁰

¹ The words of the marginal note subsequent to Atteinte are from 25,184 alone.

² T. and L., qe.

³ L. and 25,184, a la Jure; 16,560, a femme, instead of al primer Jure.

⁴ Harl., a la mise, et qe fut, instead of al primer jure et qe perdist par.

⁵ The words par la Jure are omitted from L.

⁶ T., fist; Harl., fut.

⁷ For the manner in which issue was joined in this case see the record printed in the Appendix B.

⁸ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edw. III. R^e. 169 d. It there appears that the action was brought by Geoffrey Colyn, of London, against Roger Pulter, of Watford, and that the alleged value of the horse was sixty shillings.

⁹ The words dun chival are from Harl. alone.

¹⁰ The words *Nota* lissu are from 25,184 alone.

¹¹ Harl., detinent.

¹² T. and L., com il.

¹³ This unqualified statement is hardly warranted by the words of the record, as the following extract will show:—"Et Rogerus, per Henricum Wykkewane, atornatum suum, venit et defendit vim et injuriam quando, &c. Et bene defendit quod prædictus Galfridus nullum equum eidem Rogero tradidit, nec idem Rogerus aliquem equum eidem Galfrido detinet, prout idem Galfridus superius versus eum narravit, et de hoc ponit se super patriam. Et Galfridus similiter." Thus the issue was both on the bailment and on the detinue.

Nos. 21, 22.

A.D. 1342.
Note.
After
avowry
made on
the Reple-
vin the
plaintiff
was non-
suited, and
return was
adjudged,
but not
replevis-
able.

(21.) § John de Willoughby avowed on the Prioress of Stixwold, as on his tenant, and she pleaded *Hors de son fee*, and issue was joined—At *Nisi prius* in the country the plaintiff was nonsuited.—*Thorpe* rehearsed, and prayed the Return irreplevisable,¹ because the non-suit was after plea pleaded; for the Statute of Westminster the second,² which gives on the Second Deliverance Return irreplevisable, supposes this to be before plea, because the words are *cum viderit distringentem comparentem in curia paratum sibi respondere, &c.*, supposing it to be before plea.—*Pole*.
- What you say is wrong; for one has seen on a Second Deliverance a plaintiff count of a taking made in a different place, and exception taken thereto, and the count maintained.—And afterwards *HILLARY* adjudged that the plaintiff and her pledges should be in mercy, and (said he) sue you the Return, &c.³

*Scire
facias* :
Sheriff's
return.

(22.) § Note that on a *Scire facias* the Sheriff returned *quod Scire feci J. quod sit coram Justiciariis ad diem et locum in brevi contentum, secundum tenorem hujus brevis, per A. et B.*; and, because he did not

¹ Something appears to be omitted from the text at this point.

² 18 Edw. I. (Westm. 2) c. 2.

³ The text of this case appears to

be imperfect or corrupt in all the MSS., and the translation can only be made to follow the text.

Nos. 21, 22.

(21.)¹ § Johan de Wiluby³ avowa sur la Prioressse A.D. 1342.
de Stikeswold, come sur soun tenant, qe pleda hors *Nota.*
de soun fee, et issu joint.—Al *Nisi prius* en pays *Apres*
le pleyntif fuit nounsuy.—*Thorpe* rehercea, et pria *avowere*
retourn nient replevisable,⁴ pur ceo qe ceo fuit apres *fait al Re-*
plee plede; qar le statut de Westmestre secunde, qe *plegiari* le
dounne sur⁵ la secunde deliverance retourn⁶ irreple- *pleyntif*
visable, suppose qe ceo soit avant plee,⁷ qar il dit *noun suy,*
cum viderit distringentem comparentem⁸ in curia⁹ *et retourn*
paratum sibi respondere, &c., supposant avant ple.— *agarde,*
Pole. Vous dites mal; qar homme ad vieu sour *mes nient*
la secunde deliveraunce counter de prise fait en altre *replevis-*
lieu, et la chose challenge¹⁰ et meintenu.—Et puis *able.²*
HILL. agarda¹¹ qe le pleyntif et ses plegges furent¹²
en la mercy, et suez¹³ retourn, &c.

(22.)¹⁴ § *Nota* qe le Vicounte en *Scire facias* re- *Scire*
tourna *quod Scire feci¹⁵ J. quod sit coram Justiciariis* *facias :*
ad diem et locum in brevi contentum, secundum te- *De Re-*
norem hujus¹⁷ brevis, per A. et B. ; et, pur ceo qil *turno Vice-*
[Fitz. Re- *comitis.¹⁶*
tourne del *Vicount,*
80.]

¹ From T., L., 16,560, 25,184, and Harl.

² The marginal note is from 25,184 alone. In T., L., and Harl., the marginal note is Avowere only; in 16,560 Retourn only.

³ T., Wilby; 25,184, Wylugby; Harl., Wilugby.

⁴ L., irreplevisable instead of nient replevisable.

⁵ Harl., a; the word is omitted from L. and 16,560.

⁶ T., ceo retourn; L. and 16,560, a retourn.

⁷ 25,184, plee plede.

⁸ *comparentem* is omitted from L.

⁹ The words *in curia* are from L. alone.

¹⁰ L., 16,560, and Harl., change.

¹¹ agarda is omitted from 16,560 and Harl.

¹² furent is omitted from 16,560, 25,184, and Harl.

¹³ 16,560 and Harl., suy.

¹⁴ From T., L., 16,560, 25,184, and Harl., but corrected by the record *Placita de Bunco*, Easter, 16 Edw. III. R^o. 297.

¹⁵ The words *Scire facias* in the marginal note are from Harl. alone, and the words *De returno Vicecomitis* from 16,560 alone. In 25,184 the marginal note is *Nota* retourn.

¹⁶ The words *quod scire feci* are omitted from L.

¹⁷ 25,184, *istius*.

No. 23.

A.D. 1343. warn the party as to what he was to do, the Sheriff was amerced, and an *Alias* writ was awarded.

Process
touching
Ancient
Demesne.
And ob-
serve as to
Audita
Querela.

(23.) § *Thorpe*. Heretofore a tenant sued a *Recordari* out of Ancient Demesne, because he claimed to hold at common law, and the Sheriff returned that the suitors would not make any record, and the plaintiff has since sued until judgment was given, and the tenant put out of his land; and even though the suitors would not make any record, that is not much to the purpose, for you have nothing to do with it, even if it were here, because you ought only to try the cause of the removal, and if the parties have a day by prefixion of the Sheriff you can do that; and we pray a writ against the suitors to cause them to come and show why they held the plea.—HILLARY. Go to the Chancery and bring to us a writ of *Audita querela*.

No. 23.

ne luy garny¹ pas a quei faire, le Vicounte fuit A.D. 1342.
amercie, et *sicut alias* agarde.²

(23.)³ § *Thorpe*. Altrefoitz un tenant⁴ suyst un Proces
Recordari hors daunciene demene, pur ceo qil clama daunciene
tener a la comune ley, et le Vicounte ad retourne qe les demene.
suyters ne voleint⁵ faire nul⁶ record, et le pleintif ad *Et vide de*
suy puis tanqe jugement est rendu,⁸ et le tenant mis⁹ *Audita*
hors de sa terre; et mesqil ne voleint faire nul record, *Querela.*⁴
ceo¹⁰ nest pas¹¹ molt¹² a purpos, qar vous navez¹³ qe [Fitz.
faire mesqil fuit icy, pur ceo qe vous ne devez forsque¹⁴ *Proses,*
trier la cause del remuement, et si¹⁵ les parties ont 167.]
jour par prefixion de Vicounte ceo poez vous faire;¹⁶ et
prioms bref vers les suyters¹⁷ qils soient faitz venir
a respondre¹⁸ pur quei ils ont tenu le plee.—HILL.
Alez a la Chaucellerie et portes a nous bref de *Audita*

¹ 25,184, garna.

² According to the record, the Sheriff's return to a *Sci. fa.* on a fine was, "Quod scire fecit Gregorio filio Roberti de Rokesle essendi hic, &c., juxta tenorem brevis, per Rogerum de Bixle et Gilbertum Peche. Et, quia illud returnum Vicecomitis minus sufficiens adjudicatur, pro eo quod Vicecomes respondit quod ipse non scire fecit predicto Gregorio filio Roberti essendi hic, &c., ad ea quæ in brevi requiruntur faciendum, ideo idem Vicecomes in misericordia, et afforatur per Justiciarios ad dimidiam marcam, &c. Et præceptum est Vicecomiti, sicut prius, quod per probos, &c., scire faciat predicto Gregorio filio Roberti quod sit hic," on a day given, to show as before.

³ From T., L., 16,560, 25,184, and Harl.

⁴ The marginal note is omitted from T. and L. The words *Et vide de Audita Querela* are from 25,184 alone.

⁵ tenant is omitted from 16,560.

⁶ T. and L., voillent.

⁷ nul is omitted from T. and 25,184.

⁸ The words et rendu are from L. alone.

⁹ All the MSS., except L., mis le tenant, instead of le tenant mis.

¹⁰ 25,184, ore.

¹¹ pas is omitted from 16,560.

¹² 25,184 and Harl., mout; L., rienz, instead of pas molt.

¹³ 16,560 and Harl., navez pas.

¹⁴ forsque is omitted from 25,184.

¹⁵ si is omitted from L.

¹⁶ Harl., veer.

¹⁷ The words vers les suyters are omitted from Harl.

¹⁸ The words a respondre are omitted from 16,560, 25,184, and Harl.

Nos. 24, 25.

A.D. 1342. —*Thorpe*. I well know that I shall have such a writ, and I have also seen a writ granted out of this Court, &c.

Warrantia Charta.
And note the difference with respect to the value on this writ, when the defendant admits the facts.

(24.) § *Warrantia chartæ*, where the plaintiff counted that he was impleaded by Assise of Novel Disseisin and lost, &c. And he produced a deed with warranty.—The defendant admitted it.—*KELSHULLE* adjudged that the plaintiff should recover the warranty and his damages assessed by the Court at two marks.—The plaintiff prayed judgment to have to the value, because he had lost, and execution was had of his land, and the defendant admitted it.—*HILLARY*. Sue then to have to the value and damages.—But the damages were remitted.—*Quære* whether by law he will have damages when he recovers to the value.—And note that he recovered to the value in this writ without a *Scire facias*, because the defendant admitted *gratis* that the plaintiff had lost. It would have been otherwise had he not admitted the facts.—And afterwards the plaintiff prayed judgment and execution in respect of the lands which he had on the day of the purchase of the writ of *Warrantia chartæ*.—*Judgment*. *HILLARY*. You shall have it, as in voucher, only in respect of those which you had on the day when the warranty was deraigned.—*Quære*, &c.

Forfeiture of marriage. And

(25.) § Forfeiture of marriage. The issue was on the tender while the ward was under age, and it passed for the plaintiff.—*Blaykeston*. We pray double damages.—

Nos. 24, 25.

querela.—*Thorpe*. Jeo say ¹ bien tiel bref averai jeo, et A.D. 1342.
auxi ² je ay vieu le bref graunte hors de ceste place, &c.

(24.) ³ § Garrantie de chartre, ou le pleintif counta ⁴ *Warrantia Charta*.⁴
qil fuit emplede ⁶ par assise de novele disseisine, et *Et nota diversitatem*
perdit,⁷ &c. Et mist avant fait ove garrauntie.—Le davoir a la
defendant le conust.—*KELS.* agarda qe le pleyntif value en
recoverast ⁸ la garrantie et ses damages taxes par Court ceo bref,
a ij marcz.⁹—Le pleyntif pria jugement daver a la value quant le
[qar ¹⁰ il avoit perdu, et execucion fuit ¹¹ fait de sa terre, defendant
et le defendant le conust.—*HILL.* Suez donques daver a conust.
la value]¹² et damages.—Mes les damages furent per- [Fitz.
dones.—*Quære* si de ley il avera damages la ou il *Garrantie*
recovere a la value.—[*Et nota* qil recoveri a la value]¹³ de Char-
res, 20.]
en ceo bref sanz *Scire facias*, pur ceo qe le defendant
conust de gree qe le pleintif avoit perdu. *Secus esset*
sil nust pas conu.—Et puis il pria jugement et exe-
cucion des terres qil avoit jour du bref del garrantie
de chartre purchace.—*HILL.* Vous naverez pas com en *Judi-*
voucher forsqe jour de la garrantie deresne.—*Quære, &c.* *cium*.¹⁴

(25.) ¹⁵ § Forfeture de mariage. Lissue fuit sur le Forfeture
tendre deinz age qe passa pur le pleintif.—*Blak.* de mari-
age.¹⁶ *Et*

¹ Harl., soi.

² The words et auxi are omitted from L.

³ From T., L., 16,560, 25,184, and Harl.

⁴ T., Garaunti de chartre, instead of *Warrantia Charta*. The words of the marginal note subsequent to *Charta* are from 25,184 alone.

⁵ T., pleda.

⁶ 16,560, 25,184, and Harl., plede.

⁷ The words et perdit are omitted from Harl.

⁸ T., recovery.

⁹ T., mars.

¹⁰ 16,560 par quei.

¹¹ fuit is omitted from 16,560 and Harl.

¹² The words between brackets are omitted from 25,184.

¹³ The words between brackets are omitted from T. and 16,560.

¹⁴ *Judicium* is from 16,560 alone.

¹⁵ From T., L., 16,560, 25,184, and Harl.

¹⁶ The words de mariage are not in T. All the subsequent words of the marginal note are from 25,184 alone.

No. 26.

A.D. 1342. HILLARY. By what law? It is not warranted by Statute.—*Blaykeston*. The Statute¹ gives to the lord that he may hold the land in such case until he has levied double the value of the marriage; and even though the heir have entered, *de son tort demene*, on the land, that ought not to prejudice the lord.—HILLARY. You can have single damages as on a writ of Wardship at common law; and by the Statute you shall not have double damages, although the advantage be given to the lord of retaining the lands until he has had double the value, for you have forfeiture, when you have no cause to have the land, as being guardian *de facto* of the body only. And bring your writ of Intrusion of Ward if you wish to have the land by Statute. And in plea pleading, you agreed that the defendant married after he was of full age.—And then HILLARY adjudged that the plaintiff should recover only single damages.—*Quære* the cause of the judgment: whether because damages are not given by the Statute, or because a forfeiture as to double damages ought not to be understood except when the heir marries under age.

Quære impedit, where the plaintiff took title to present

(26.) William Dacre and Katharine his wife brought a *Quære impedit* against the Dean and Chapter of Lincoln, in the time of the vacancy of the bishopric, in respect of the church of Holbeach, and took their title

¹ Stat. Merton, 20 Hen. III. c. 6; Westminster the First (3 Edw. I.) c. 22.

No. 26.

Nous prioms damages¹ au double.—HILL. Par quele A.D. 1342.
 ley? Ceo nest pas garraunti par statut.—*Blak.* nota en
 Statut doune al seigneur de tener la terre en le cas cesty bref,
 tanqil eit leve la double value de mariage; et tut soit par quel il
 leir entre, de soun tort demene,² en la terre,³ ceo ne ne deit
 deit pas prejudicier au seigneur.—HILL. Vous poez aver mye re-
 senble damages [come en bref de garde a la comune ley; coverir la
 et par statut naverez pas double damages]⁴ coment qe possession
 avantage soit done al seigneur de retenir⁵ tanqe il eit la de la terre,
 double value, qar vous avez⁷ forfaiture, la ou vous navez il ne re-
 pas cause daver la terre, come gardeyn de fait soulement recovery
 de corps. Et portes vostre Intrusion⁸ de garde si vous forsque
 voillez aver la terre par statut. Et en plee pledaunt sngle
 estes vous a un qe le defendant se⁹ maria apres ceo qil damages.
 fuit de pleyn age.—Et puis HILL. agarda qil recoveri [Fitz.
 forsque sngle¹⁰ damages.—*Quere causam judicii, vel Accion sur*
quia damna non dantur per statutum, vel quia foris lestatut,
factura quoad damna in duplo non debet intelligi 14.]
nisi quando heres se maritat¹¹ infra etatem.

(26.)¹² William Dacre et Katharine¹³ sa femme por- *Quare*
 terent *Quare impedit* vers le Dean et Chapitre de le pleintif
 Nicole, en temps de voidance del Evesche,¹⁴ del eglise prist
 de Holbeche,¹⁵ et pristrent lour title de ceo qe lavowe- presenter

¹ MS. pas.² Harl., daver; 16,560, nos damages.³ demene is from 25,184 alone.⁴ In T., the words en le cas are added after terre.⁵ The words between brackets are not in 25,184.⁶ Harl., receive.⁷ T. and L., avez; 16,560, naverez.⁸ The words portes vostre Intrusion are omitted from 16,560, and the word vostre also from Harl.⁹ 25,184, soi.¹⁰ L. seingle.¹¹ 16,560, *maritavit se*; 25,184, *se maritavit*, instead of *se maritat*.¹² From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edw. III., R^o. 202.¹³ All the MSS. of Y. B., Margerie or Margarete.¹⁴ 25,184 and Harl., Evesqe.¹⁵ Harl., Howothe.

No. 26.

A.D. 1343. in that the advowson was holden of them and the heirs on the ground that the advowson was held of him, and aliened in mortmain without his consent and licence; wherefore he seized the advowson, and so remains still seized thereof, &c.

issuing from the body of William,—and they shewed how.¹ And they showed that this advowson was purchased by the Bishop of Lincoln to hold to him and his successors without their license, and therefore they entered and seized the advowson, and thus they are seised, and thus it belongs to them to present. And in counting they showed how two parceners held of them and aliened.—*Pole*. In counting the count, they have spoken of a composition made between parceners, and have shown that, by reason of the nonage of one, amongst other lands, &c., the moiety of that advowson with the turn of presentation was afterwards seized into the hand of the King; and he leased the wardship to Roger Dammory, who presented John de Botheby; and

¹ According to the declaration in the record, Anthony de Bek was seized of the advowson as of fee and right, and presented Thomas de Goldesburgh. Anthony held the advowson of Thomas de Multon as of his manor of Holbeach by certain services specified. “Et de ipso Antonio, quia obiit sine herede de se, descendit advocatio, &c., cuidam Johanni ut fratri et heredi, &c.” Et de ipso Johanne descendit advocatio, &c., quibusdam Alicie et Milisente ut filiabus et heredibus, &c., quæ quidem Alicia nupsit se cuidam Wilhelmo de Wylughby, et prædicta Milisenta nupsit se cuidam Johanni de Harecourt, inter quos quidem Wilhelmum et Aliciam Johannem et Milisentam concordatum fuit super advocacione prædicta, unde quidam compositio facta fuit inter eos, scilicet quod prædicti Wilhelmus et Alicia, ut eyneia, &c., et heredes ipsius Alicie in prima vacatione ecclesie illius, cum accidisset, præsen-

“tarent ad eandem, et prædicti Johannes et Milisenta et heredes ipsius Milisente præsentarent ad eandem in secunda vacatione, cum accidisset, et sic prædicti Wilhelmus et Alicia et heredes ipsius Alicie, et prædicti Johannes et Milisenta et heredes ipsius Milisente alternatim præsentarent ad eandem in perpetuum. Et de ipsa Alicia descendit jus propartis sue, &c., cuidam Roberto ut filio et heredi, &c.” Et de ipso Roberto descendit jus propartis sue cuidam Johanni ut filio et heredi, &c., qui tunc temporis fuit infra ætatem, per quod dominus Edwardus Rex pater domini Regis nunc custodiam corporis et terrarum una cum advocacionibus ecclesiarum ejusdem Johannis seisivit in manum suam, eo quod prædictus Robertus pater, &c., tenuit aliqua tenementa de ipso domino Rege in capite, qui quidem dominus Rex custodiam illam

No. 26.

son fuit tenu de eux et les heirs du corps William A.D. 1242.
engendres,—et monstrenterent coment—et qe cele avoweson pur ce qe
fuit purchace par Levesqe de Nicole a luy et a ses lavoweson
successours saunz lour conge, par quei ils entrerent et fuit tenus
seisierent lavoweson, et issint sount seisiz, et issint de luy, et
appent a eux a presenter. Et en countant ils mous- aliene, sans
trerent coment deux parceners tindrent de eux qe son gree
alienarent.—*Pole*. En counte countant ount ils parle et sa
dune composicion² fait entre parceners, et ount moustre licence, en
qe, par noun age del une, entre altres terres, &c., la mort-
moite de cele avoweson apres par tourne fuit seisi en mayn; par
la mayn le Roi, qe lessa la garde a Roger Dammory,³ quei il
qe presenta Johan de Botheby,³ par qi mort ils fount seisi
lavoweson
et issint
demoert
uncore
seisi de
ycele, &c.¹
[Fitz.
Mort-
mayn, 9.]

¹ The words in the side note following *Quare impedit* are from 25,184 alone.

² Harl., composition.

³ The names are from the record. The MSS. of Y. B. give various initials.

No. 26.

A.D. 1342. on John's death they make the church to be now vacant. And they have not counted that this moiety was afterwards sued out of the King's hand, and thus it can not be understood but that the King is still seised of that moiety of the advowson ; judgment of the count, which supposes him to be sole patron for the reason above.—
PARNING. You prove that you would be on both sides

" cum advocationibus ecclesiarum
 " ejusdem heredis concessit cui-
 " dam Rogero Dammory, tenen-
 " dam usque ad legitimam ætatem
 " heredis prædicti, quo tempore
 " ecclesia prædicta vacavit per
 " resignationem prædicti Thomæ de
 " Goldesburghe, per quod prædic-
 " tus Rogerus, custos, &c., inci-
 " piendo turnum, nomine prædicti
 " heredis presentavit
 " Johannem de Botheby . . &c.,
 " per cujus mortem
 " ecclesia prædicta modo vacat,
 " &c. Et de prædicta Milizenta
 " descendit jus propartis, &c. cui-
 " dam Willelmo de Harecourt ut
 " filio et heredi, &c. Et de præ-
 " dicto Thoma de Multone descen-
 " dit prædictum manerium de
 " Holbeche ad quod, &c., una cum
 " servitiis prædictis, cuidam Mar-
 " garetæ ut filis et heredi, &c.,
 " quæ quidem Margareta nupsit se
 " cuidam Ranulpho de Dacre, qui
 " quidam Ranulphus et Margareta,
 " per finem, &c., concesserunt ma-
 " nerium illud de Holbeche cum
 " pertinentiis, unde prædicta ser-
 " vitia sunt parcella, &c., prædictis
 " Willelmo de Dacre et Katerinæ
 " et heredibus de corpore ipsius
 " Willelmi exeuntibus, per quam
 " concessionem prædicti Johan-
 " nes de Wylughby et Willelmus
 " de Harecourt se attornaverunt
 " prædictis Willelmo de Dacre et

" Katerinæ. Et postea prædicti
 " Johannes de Wylughby et Willel-
 " mus de Harecourt advocationem
 " prædictam dederunt Henrico
 " tunc Episcopo Lincolnensi, tenen-
 " dam sibi et successoribus suis
 " in perpetuum, licentia ipsorum
 " Willelmi de Dacre et Katerinæ
 " super hoc non obtenta, per quod
 " iidem Willelmus de Dacre et
 " Katerina, infra annum post alie-
 " nationem illam, seisiverunt advo-
 " cationem prædictam, et ea ratione
 " ad ipsos Willelmum de Dacre et
 " Katerinam pertinet ad prædictam
 " ecclesiam præsentare, et prædicti
 " Decanus et Capitulum eos injuste
 " impediunt, unde dicunt quod de-
 " teriorati sunt et damnum habent
 " ad valentiam nulle librarum.
 " Et inde productum sectam, &c."
 " The Dean and Chapter "Non
 " cognoscendo" the several allega-
 " tions above, pleaded "quod iidem
 " Johannes de Wylughby et Wil-
 " lelmus de Harecourt dederunt
 " advocationem prædictam prædic-
 " to Episcopo, tenendam sibi et
 " heredibus suis in perpetuum, et
 " non eidem Episcopo tenendam
 " sibi et successoribus suis in
 " manum mortuam prout iidem
 " Willelmus de Dacre et Katerina
 " in narrando supponunt."

Issue was joined thereon and the *Venue* was awarded, but nothing further appears on the roll.

No. 26.

leglise ore voide. Et ils nount pas counte qe cele A.D. 1342.
moite fuit puis suy hors de la mayn le Roi, et issint ne
poet estre entendu mes qe le Roi est unquore seisi de
cele moite de lavoweson ; jugement de counte, qe suppose
luy estre soul avowe *causa qua supra*.—PARN. Vous
provez qe vous serrez dune part et dautre destourbours

No. 27.

A.D. 1342. disturbers to the King.—*W. Thorpe*. The exception is not taken by way of surmise that the moiety of the advowson is in fact in the King's hand because it was not sued out, but we take exception to the faultiness of the count by which it is not supposed that the moiety was sued out of the King's hand. And, if we be delivered with regard to the party, as to the King we shall make satisfaction, for that is nothing to the party. And since that which is supposed by the count is not denied by them, we demand judgment. Besides, if the one parccener, who had no occasion to sue a moiety out of the King's hand, had afterwards presented, that presentation would be in lieu of suit for the other, and would put both parcceners in possession.—*Quære*.—And afterwards *W. Thorpe* waived the exception, and made protestation that he did not admit that the advowson was holden of the plaintiffs; and he said that the Bishop purchased to hold to him and his heirs, and not to him and his successors; ready, &c.—And the other side said the contrary.

Dower.
And note
that re-
lease made
to a rever-
sioner is
sufficiently
good.

(27.) § Dower of a third part of a manor.—*Gayneford*. Whereas she demands of the endowment of her first husband, we tell you that her second husband and she released by fine all the right which they had in the whole manor to ourselves; and see here a part of the fine; judgment whether an action, &c.—*Thorpe*. Let them

No. 27.

au Roi.—*W. Thorpe*. Le challange nest pas pris par voie de A.D. 1342.
surmise qe le fait soit tiel qe la moite del avoweson est en
la mayn le Roi¹ pur ceo qe ele ne fuit pas suy hors, mes
nous le pernoms a la defaute de counte par quel nest pas
suppose qe ele fuit suy hors. Et, si nous soioms deliverez²
de la partie, quant a³ Roi nous ferroms gree, qar ceo nest
rien a la partie. Et del houre qil nest pas dedit de eux ceo
qest suppose par counte, nous demandoms jugement.
Ovesqe ceo, si lautre parcener ust⁴ presente puis a qi il
ne fuit pas de suir⁵ hors de la mayn le Roi, cele presente-
ment serroit en lieu de suyte⁶ pur lautre,⁷ et metterait
touz deux parceners en possession.—*Quæra*.—Et puis *W.*
Thorpe weyva⁸ le challenge, et fist protestacion qil ne
conust pas lavoweson estre tenu del pleyntif; et dit qe
Levesqe purchacea a luy et a ses heirs, et noun pas a luy
et ses successeurs; prest, &c.—*Et alii e contra*.

(27.)⁹ § Dower de la terce¹¹ partie dun manoir.—*Gayn*. La ou ele demande del dowement soun primer
baroun, nous vous dioms qe soun secunde baroun¹²
et luy releesserent par fine tut le dreit qils avoint
en le manoir entier a nous mesmes; et veez icy
partie de la fine; jugement si accion, &c.¹³—*Thorpe*.

Dower.
Et nota
qe relees
fait a celuy
en rever-
sion est
assez
bon.¹⁰

[*Fitz,*
Barre,
245.]

¹ The words mayn le Roi are omitted from Harl.

² T. and L. delivers.

³ 25,184, au; Harl., a le.

⁴ 25,184, est.

⁵ Harl., assure, instead of de suir.

⁶ Harl., tourn.

⁷ The words pur lautre are from 16,560 alone.

⁸ weyva is omitted from T.

⁹ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edw. III. B^o 186. It there appears that the action was brought by Robert Gyene and Lucy his wife against John de Greiville, in respect of a third part of a third part of the

manor of Suthewyke (Southwick, Wilts), claimed by Lucy of the endowment of William de Greiville, her former husband.

¹⁰ The words following Dower are from 25,184 alone.

¹¹ L. and 25,184, tercie.

¹² John de Wolverton, according to the record.

¹³ In the record the following passage is added:—"Et dicit quod, " tempore levationis ejusdem finis, " idem Johannes de Greiville fuit " tenens de prædicto manerio cum " pertinentiis in dominico ut in " dominico, in servitiis ut in " servitiis, in reversione ut in " reversione, &c."

No. 27.

A.D. 1342. say whether that parcel whereof we demand a third part was in demesne or in service in their hands when the fine was levied.—HILLARY. Answer: they have pleaded in bar at their peril.—*Thorpe*. You see clearly that they have supposed us to have no estate except as wife. And at the time of the release, one A.¹ held a third part of the manor whereof we demand dower. And we demand judgment whether by such a fine levied to you, when at the time of levying it our action was saved against A., who was then tenant, notwithstanding the fine, you can oust us from our action. And he said that A. was living; so that it could not be understood but that they had the estate of A.—*Gayneford*. A. was tenant in dower and rendered her estate to us, &c.

¹ As to this and other names (including those of the parties) mentioned in the cause, see the notes to the French text which refer to the record.

No. 27.

Dient¹ le quel cel parcelle dount nous demandoms la A.D. 1342. terce² partie fuit en demene ou en service en lour mayn quant la fine se leva.—HILL. Responnez : ils ount plede en barre a lour peril.—*Thorpe*. Vous veiez bien qil nous ount suppose³ aver nul estat forsqe [come femme.⁴ Et, al temps del relees, un A. tynt la tierz⁵ partie del manoir]⁵ dount nous demandoms dower.⁶ Et demandoms jugement si par tiele fine leve a vous,⁷ ou al temps del lever nostre⁸ accion fuit salve vers A., qe adonques fuit tenant, *non obstante* la fine, si vous nous⁹ puissiez daccion ouster. Et dit qe A. est en vie; issi ne puit¹⁰ estre entendu mes qils ont lestat A.—*Gayn*. A. fuit tenant en dower et nous rendit soun estat, &c.¹¹

¹ 25,184, ditez; L., diount.

² L. and 25,184, tiercie.

³ T., coment ils ount suppose nous, instead of qil nous ount suppose.

⁴ In L., 16,560, and 25,184 are here inserted the words et nous dioms qe nous avoms rien forsqe come femme.

⁵ The words between brackets are not in Harl.

⁶ The words en dower are added in all the MSS. but Harl.

⁷ Harl., nous.

⁸ nostre is omitted from 25,184.

⁹ Harl. ne.

¹⁰ 16,560, poiez.

¹¹ The latter part of the report beginning "*Thorpe*. Vous veiez bien" appears much more intelligibly in the record thus:—

"Et Robertus et Lucia dicunt quod ipsi, virtute finis prædicti, ab actione sua præcludi non debent, &c., quia dicunt quod tempore levationis ejusdem finis

"quædam Margareta quas fuit
"uxor Nicholai de Greyville
"tenuit prædictam tertiam partem manerii unde, &c., de prædicto Johanne de Greyville per certa servitia, &c., quas quidem Margareta adhuc superstes est, ita quod idem Johannes tunc nihil habuit in eadem nisi in servitiis, &c. Et prædictus Johannes de Greyville non allegat ipsam Luciam tempore levationis prædicti finis aliquem statum seu jus habuisse in eadem tertia parte nisi ut uxor ipsius Johannis de Wolvertone, &c., et sic in casu isto necessario requireretur eidem Johanni de Wolvertone et Lucie, si ipsi tunc forent per viam actionis petendi dotem ipsius Lucie, quod ipsi breve suum versus ipsam Margaretam impetrassent, et non versus ipsum Johannem de Greyville. Unde petunt judicium si ipsi, virtute finis præ-

No. 28.

A.D. 1342.

*Cui in
vita.*

And note
that when
a writ is in
the words
"into
which the
Abbot has
not entry,
&c.," it
must be
understood
to be the
present
Abbot.

(28.) § *Cui in vita*, on a lease made by the husband, [the words of the writ being] "into which the Abbot of Coggeshall has not entry but by her husband."—*Thorpe*. He did not lease to the Abbot; for we tell you that the wife's ancestor, whose heir, &c., enfeoffed our predecessor of certain lands with warranty before the Statute;¹ and afterwards our predecessor was impleaded, &c., and vouched the husband and wife, who came and entered into warranty, and pleaded, and lost; and this land demanded was rendered in value; judgment of this writ, which supposes that a lease was made to us, whereas we found our church seised.—*Gaynesford*. What was the name of your predecessor who recovered to the value?—*Thorpe*. I see clearly that you wish to

¹ Statute of Mortmain, 7 Edw. I. St. 2.

No. 28.

(28.)¹ § *Cui in vita* dun lees fait par le baroun, A.D. 1342. en les queux Labbe de Coggeshale nad entre si Cui in
noun par soun baroun.²—*Thorpe*. Il ne lessa pas al vita.
Abbe; qar nous vous dioms qe launcestre la femme, qi Et nota
heir, &c., feffa nostre predecessour avant statut, ove quant le
garrauntie, de certeinz terres; et puis nostre predecessour bref voet
fuit emplede, &c., et voucha le baroun et la femme qe in quas
vyndrent, et entrèrent en la garrantie, et plederent, et Labbe nad
perderent;⁴ et ceste terre demande fuit fait en value; entre cest
jugement de ceo bref, qe suppose le lees fait a nous,⁵ la a entendre
ou nous trovames nostre eglise seisi.—*Gayn*. Quele Labbe
noun avoit vostre predecessour qe recoveri a la⁶ value? qorest.⁷
—*Thorpe*. Jeo vei bien qe vous voudres aver bref⁷ de

“dicti eidem Johanni, tunc nihil
“habenti in tertia parte prædicta
“unde, &c., nisi in servitiis tan-
“tum, levati, ab actione dotis ipsius
“Lucie præcludi debeant in hac
“parte, &c.

“Et Johannes dicit quod præ-
“dicti Robertus et Lucia per re-
“sponsionem prædictam expresse
“cognoscunt finem prædictum per
“ipsam Luciam et prædictum
“Johannem tunc virum suum
“levatum fuisse in forma præ-
“dicta, et nihil allegant in eva-
“cationem ejusdem finis nisi
“solummodo quod prædicta
“Margareta tunc tenuit prædictam
“tertiam partem, unde, &c., et
“quod prædictus Johannes de
“Greyville nihil habuit in eadem
“nisi in servitiis tantum, idem
“Johannes dicit quod prædicta
“Margareta tenuit eandem tertiam
“partem in dotem de hereditate
“ipsius Johannis de Greyville, et
“jus et reversio inde ad ipsum
“Johannem tunc spectabat, &c.,
“et postea eadem Margareta red-

“didit ipsi Johanni eandem ter-
“tiam partem, &c., unde petit
“judicium, ex quo ipse, tempore
“levationis ejusdem finis, habuit
“feodum in eadem, et reversio
“inde ad ipsum spectans fuit, in
“quo casu actio dotis ipsius Lucie
“et alia actio quæcunque per
“finem prædictum extincta fuit, si
“ipsi dotem ipsius Lucie habere
“debeant in hac parte.”

Several adjournments follow, but
the judgment does not appear on
this roll.

¹ From T., L., 16,560, 25,184,
and Harl.

² The words following *vita* are
from 25,184 alone.

³ Harl., puis le lees qe le baroun
fit a soun predecessour, &c., instead
of par soun baroun; L., pus le lees
qe le baroun fit a luy.

⁴ Harl., perdirount.

⁵ The words a nous are omitted
from Harl.

⁶ Harl., et ceste terre fut fait en
la instead of qe recoveri a la.

⁷ 16,560, lire.

Nos. 29, 30.

A.D. 1842. have a writ of our giving; you shall not have it; we have traversed the making of the lease to us.—
 HILLARY (to the demandant). Answer.—And afterwards the demandant was nonsuit.

Trespass, in respect of trees cut down. And observe the defendant's plea, for he does not affirm any right to be in himself.

(29.) § Trespass brought by John Waxand, in respect of trees cut down, and warren hunted, and fish-ponds fished, by separate writs.—*Thorpe*. The plaintiff has nothing in the soil where, &c., unless in common with Isabel de Burgh, who is not named in the writ; judgment of the writ.—*Pole*. You see clearly how we complain of our trees being cut down, and so that would not be an answer even if we had nothing in the soil; judgment.—*Thorpe*. Our exception is with this meaning, that you have nothing in the soil or in the trees unless in common, and that the fish-ponds and the warren belonged to you and another in common.—*Pole*. You carried away our trees, and hunted, and fished, according as we have supposed, without this that Isabel had anything; ready, &c.—And the other side said the contrary.

Entry, *ad terminum qui præterit*, where aid was prayed of a tenant

(30.) § Entry, *ad terminum qui præterit*, against a man and his wife. And they showed that this land and other land descended to the wife and her co-parcener, and that partition was made, and that this part was allotted as the purparty of this woman in satisfaction, &c. And [Counsel] showed how the husband of her co-

Nos. 29, 30.

nostre¹ livre; noun² averez pas; nous avoms traverse A.D. 1342.
le lees estre fait³ a nous.—HILL. (al demandant).
Respondez.—Et pus le demandant fut noun suy.⁴

(29.)⁵ § Trespas des arbres coupes, par Johan Waxand, et garreyne chace, et vivers pesche, par severals brefs.—*Thorpe*. Le pleintif nad rien en le soil ou, &c., si noun en comune ove Isabele de Burghe qe nest pas nome en le bref;⁷ jugement du bref.—*Pole*. Vous veiez bien coment nous pleynoms⁸ de noz arbres coupes, ou tut nussoms⁹ rien en le soil,¹⁰ ceo ne serroit pas respons; jugement.—*Thorpe*. Nostre excepcion est a cele entente, qe vous navez rien en le soil, nen les arbres, si noun en comune, et qe les vivers¹¹ et la garreyne furent a vous et un altre en comune.—*Pole*. Vous emportastes noz arbres, et chaceastes, et pescheastes solonc ceo qe nous supposoms, saunz ceo qe Isabele rien avoit; prest, &c.—*Et alii e contra*.

Trespas,
des arbres
coupes.
Et vide le
ple le de-
fendant,
qar en
luy mesme
il affirme
nul dreit.⁶

(30.)¹² § Entre¹³ *ad terminum qui præterit*, vers un homme et sa femme, qe moustrent qe ceste terre et altre terre descendi a la femme et sa parcenere, et qe purpartie se fist, et ceste partie¹⁴ alote a la purpartie ceste femme en allowaunce, &c. Et moustra coment le

Entre,¹³ *ad terminum qui præterit*, ou eide fut pris¹⁴ del tenant par

¹ 25,184, vostre.

² 25,184, vous.

³ The words estre fait are from T. alone; in L., suppose is substituted.

⁴ The last sentence is from L. alone.

⁵ From T., L., 16,560, 25,184, and Harl.

⁶ The words des arbres coupes are from 25,184 and Harl., and the remainder of the side note from 25,184 alone.

⁷ The words en le bref are from L. alone.

⁸ Harl. pledoms.

⁹ Harl., mesouns.

¹⁰ In 25,184 the words nen les arbres are added after soil.

¹¹ 25,184, rivers.

¹² From T., L., 16,560, 25,184, and Harl.

¹³ The word Entre is omitted from all the MSS. except T. and Harl.

¹⁴ MS. eide, instead of prie.

¹⁵ The word Entre is from Harl. alone.

¹⁶ L. and 16,560, parcelle.

No. 31.

A.D. 1842. by the curtesy of England, who had no issue, according to a custom, and the party was by judgment ousted from the aid, because the person who prayed it herself had the reversion. parcener held a moiety as the purparty of her co-parcener by the curtesy of England, although there was no issue between them, by the custom of Gavelkind, and she prayed aid of him.—*Gayneford*. You shew that he is a stranger in blood, and that he can not hold in parcenary any more than a woman tenant in dower; and also you prove the right to the reversion to be in yourself; judgment whether you ought to have aid of him.—*Pole*. I shall have aid of him just as much as of any tenant by the curtesy of England and of the heir of my co-parcener, in whose right he would hold; and we are not as in a case of Dower, where the wife can vouch.—*Gayneford*. Certainly you can in this case.—*HILLARY* by judgment ousted her from the aid.

Scire facias, where the *Mittimus* was of earlier date than the *Certiorari*, &c., and for that reason the tenant went quit as to this writ.

(31.) § *Scire facias* for Thomas son of Peter Breuse¹ against John Moubray and Joan his wife. Exception was taken to the return because it purported to be "by A. Sheriff, &c.," and did not contain the words "I the Sheriff answer thus," or the words "the answer of the Sheriff."—This was not allowed.—And then exception was taken because he had warned the tenants to answer Thomas the son of Peter Breuse, cousin and heir, &c, and thus they are warned to answer a different person from Thomas the son of Peter.—This was not allowed, because Peter was (in the note of the fine which was recited in the writ of *Scire*

¹ This name, which appears in various forms in the various MSS. of the Year Books, and in the

record, is, perhaps, best known as de Braosa, or Braose, and is so usually printed in the Peerages.

No. 81.

baroun sa parcenere [tient la moyte de la purpartie sa parcenere]² par ley Dengleterre, par usage de Gavilkynde, pur ceo qil navoit pas issue entre eux, et pria eide de luy.—*Gayn.* Vous moustres qil est estrange du saunk, et qil ne poet tener en parcenerie pluis qe femme tenant³ en dowere; et auxi vous provez⁴ le dreit del reversion en vous mesme; jugement si de luy eide⁵ devez aver.—*Pole.* Jeo averay⁶ eide de luy si avant com de tenant par la ley Dengleterre et del heir⁷ de ma parcenere en qi dreit il tiendrait; et nous sumes pas com en un dower, ou femme poet voucher.—*Gayn.* Certes si poez en ceo cas.—*HILL.* par agard ly ousta del eide.

A.D. 1348.
la curtesie
Dengle-
terre, qe
navoit pas
issu, par
usage, et
oste del
eide par
agard pur
ce qil
mesme qe
pria avoit
le rever-
sion.¹
[Fitz.
Ayde,
129.]

(31.)⁸ § *Scire facias* pur Thomas fitz Piers Breuse vers Johan Moubray et Johanne¹⁰ sa femme. Le retourne fuit challenge pur ceo qil voleit par A. Vicounte, &c., et ne dit pas *Ego Vicecomes respondeo sic, nec¹¹ responsio Vicecomitis.*—*Non allocatur.*—Puis de ceo qil avoit garny les tenanz a respondre a Thomas fitz Piers Breuse,¹² cosyn et heir, &c. issi est il garny a respondre a altre persone qe a Thomas fitz Piers.¹³—*Non allocatur,* qar Piers en la note [quele fuit reherce par bref de *Scire*

Scire facias ou le *Mittimus* fuit deigne date qe le bref *Quia certis de causis*, &c., par quel a ce bref le tenant ala quites, &c.⁹

[Fitz.
Briefs,
653; *Retourne del Vicounte*,
81.]

¹ The words following *prateriit* are from 25,184 alone.

² The words between brackets are omitted from T.

³ Harl., *demandante*; the word is omitted from L.

⁴ 16,560, *pernez*; the word is omitted from L.

⁵ *eide* is omitted from 25,184.

⁶ L. and 25,184, *avera*.

⁷ The words del heir are omitted from 25,184 and Harl.

⁸ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Bance*, Easter,

16 Edw. III. R^o 328. See also No. 37 of Hilary Term next preceding, and No. 46 of Trin. 15 Edw. III.

⁹ The words after *facias* are from 25,184 alone. In L. there is a much longer side-note, but in a later hand; the writ *Quia certis de causis* is there called, as in later times, *Certiorari*.

¹⁰ Harl., *Jone*.

¹¹ Harl., *non*.

¹² 16,560, *Drewes*.

¹³ This name is also spelled *Pieres*, *Peres*, *Piases*, and *Peres* in the various MSS.

No. 31.

A.D. 1342. *facias*) supposed to be cousin and heir.¹—And then exception was taken on the ground of a variance between the writ and the note, because the writ had the word *ejusdem*, and the note the word *ipsius*; and then because the writ of *Mittimus*, by which the record came into this Court, was of earlier date than the writ of *Certiorari* by which the transcript came out of the Treasury into the Chancery, and thus it is to be supposed that it was of record in the Chancery before it came to them from the Treasury, which could not be.—*Stouford*. You have nothing to do with the writ of *Certiorari*; for even though the writ [of *Certiorari*] had rested in peace (unissued?) in the Chancery, the remaining writ of *Mittimus* is sufficient. And according to your statement it can only be understood that the record came into the Chancery by another writ of *Certiorari*.—And then exception was taken to the writ because another writ of *Scire facias* upon the transcript of the fine was sued in the last term, which was not determined, and while that writ was pending the present writ was purchased; judgment of the writ.—*HILLARY*. This writ was purchased after the day on which the other writ was returnable; and if a writ be abated at the end of the term, still that refers back to the day on which it is returned.—*Thorpe*. Not so here, because at the end of the term the parties had a day, and he might have held to our default, and we might have held to his nonsuit, and the discontinuance is because he did not further continue his suit this term, so that in law that suit was pending all that time.—*Stouford*. What

¹ According to the record | brother of Richard the son of
Thomas was son of Peter, who was | William, plaintiff in the fine.

No. 31.

facias]¹ fuit suppose cosyn et heir, &c.—Et puis A.D. 1342. variaunce fuit challenge entre le bref et la note [qar le bref voleit *ejusdem* et la note]² *ipsius*; et puis de ceo qe le bref de *Mittimus* fuit deyne³ date par quel le record vynt ceinz⁴ qe le bref de *Certis de causis certiorari volumus*,⁵ qar quel le transcript⁶ vynt hors de la Tresorie en la Chauncellerie, issi est il a supposer qe ceo fuit de record en Chauncellerie avant qil vynt a eux de la Tresorie, qe ne puit estre.—*Stouff.* Vous navez⁷ qe faire del bref *Certiorari volumus*; qar mes qe le bref ust⁸ demore en pees en la Chauncellerie, le remenant suffit; et a vostre dit il⁹ ne puit estre entendu mes qe le record vynt en Chauncellerie par altre bref de *Certiorari volumus*.—Et puis le bref challenge de ceo qe altre bref de¹⁰ *Scire facias* fuit suy le derreyn¹¹ terme hors de cel transcript,⁶ quele fuit discontinue, et pendaunt cele bref cestuy¹² bref fuit purchase; jugement du bref.—*HILL.* Cestuy bref fuit purchase puis le jour qe lautre bref fuit retournable; et si un bref soit abatu a la fyne du terme [ceo refiert unquore al jour qil est retourne.¹³—*Thorpe.* *Non sic hic*, qar a la fyne du terme]¹⁴ les parties avoient jour, et il pout aver pris a nostre defaute, et nous a sa nounsuyte, et la discontinueance est pur ceo qil ne continua pas¹⁵ outre, cele terme, sa suyte, et issi qe tut cele terme¹⁶ en ley cele suyte¹⁷ fuit pendaunt.—*Stouff.* Ceo qe vous alleggez

¹ The words between brackets are omitted from T.

² The words between brackets are omitted from Harl.

³ 16,560, deisne; 25,184 and Harl., deigne.

⁴ 16,560, ciens.

⁵ Harl., volumus.

⁶ 16,560, transescript.

⁷ Harl., naverex.

⁸ 16,560, est.

⁹ Harl., qil.

¹⁰ The words bref de are omitted from 25,184.

¹¹ T. and L., dreyn; Harl., drein.

¹² T., ceo.

¹³ L. and Harl., retournable.

¹⁴ The words between brackets are omitted from 25,184.

¹⁵ 16,560 and Harl., puis.

¹⁶ Harl., terre.

¹⁷ Harl., suist.

No. 32.

A.D. 1342. you allege is not to the purpose unless you allege that we appeared to that writ and that it is of record; for a writ purchased while another is pending does not, if the party have not appeared to the first writ, abate the second writ.—HILLARY. We will consider your exceptions.—And then exception was taken because the tenour of this fine was pending in the King's Bench, which is a higher court.—And afterwards, as to the *Scire facias* in respect of which the *Mittimus* was of earlier date than the writ of *Certiorari*, HILLARY said that a new writ must be sued out—and this by judgment.

Dower of common of pasture for all manner of beasts. (32.) § The demand was for a third part of common of pasture in so many acres of land with all manner of beasts, except goats, at all seasons of the year.—*R. Thorpe*. Every demand in Dower should be expressed with certainty; and this demand is not in respect of a certain number of beasts, so that by the demand one can not be apprised of what it is that the dower is demanded, whether in respect of a certain number or without number; judgment.—*W. Thorpe*.

No. 32.

nest pas a purpos si vous nallegez qe nous apparumes a cel bref et qe ceo soit de record; qar bref purchase pendaunt altre, si partie neit¹ apparu al primer bref,² nabate pas le secunde bref.—HILL. Nous aviseroms sur voz challanges.—[Et puis fuit challenge]³ de ceo qe le tenour⁴ de ceste fyne pent in Baunc le Roi, qest pluis haute place.—Et puis, quant a lun *Scire facias*, dount⁵ le *Mittimus* fuit deigne date qe le bref *De certis causis*, HILL. dit qil covynt suir novel bref, *et hoc* par agard.⁷

A.D. 1342.

Nota qe bref purchase pendaunt un autre nabatera pas sil neit aparu al primer bref.⁶

(32.)⁸ § La demande est¹⁰ de la terce partie de comune de pasture¹¹ en taunz des acres des terres¹² ove¹³ tote manere des avers, forspris chevres,¹⁴ en chesqun seisoun del an.—*R. Thorpe*. Chesqun demande¹⁵ en¹⁶ dower serra mys en certeyn; et ceste demande nest pas a certeyne noubre des avers, issi qe par la demande homme ne puit estre appris de quei le dower est¹⁷ demande, ou a certeyne noubre ou saunz noubre; jugement.¹⁸—*W. Thorpe*.¹⁹ Quant homme fait pleynte en

Dower de comune de pasture a tous maneres de bestes.⁹

¹ 25,184, ne avoit.

² 16,560, jour.

³ The words between brackets are not in 16,560.

⁴ 25,184, la tenure.

⁵ 25,184, de tut, instead of dount.

⁶ The last side note is from Harl. alone.

⁷ Apart from the technical point decided, this was an important and interesting case in relation to the interference of the King and Council, in the reign of Edward I., to prevent the dismembering of the Barony of Bramber, &c. See the record (somewhat abridged) of the pleadings following the issue of the new writ of *Scire facias* in the Appendix (C).

⁸ From T., L., 16,560, 25,184, and Harl.

⁹ The words after Dower are from Harl. alone. There is a different and carelessly written side note in 25,184.

¹⁰ est is from 25,184 alone.

¹¹ The words de pasture are from 25,184 alone.

¹² The words des terres are from Harl. alone.

¹³ Harl., od.

¹⁴ 16,560 and 25,184, chevers; Harl., cheveres.

¹⁵ Harl., manere; the word is omitted from T.

¹⁶ T. and Harl., de.

¹⁷ Harl., serra mis en, instead of est.

¹⁸ jugement is omitted from Harl.

¹⁹ 25,184, qar, instead of W. Thorpe.

No. 38.

A.D. 1342. When plaint is made in an Assise, or count in a *Quod permittat*, for commoning with all manner of beasts, it is always understood to be for beasts without number, and so also it is understood in this writ of Dower; and we can not have any other demand.—*R. Thorpe*. If such a plaint were made in an Assise or such a count in a *Quod permittat*, it would be understood to be in respect of common appendant; but a writ of Dower does not lie for common appendant; and if this demand were maintained, you would have as much for your dower as your husband had for the whole; and if a woman is to be endowed of common for beasts without number, the demand should be limited for particular days or to a third part of the land.—*W. Thorpe*. Your exception is peremptorily to our action, because we shall not have any other demand; for if a woman be endowed out of a hundred or a bailiwick she will demand a third part of the hundred or of the bailiwick.—*R. Thorpe*. In that case she may well do so, and she will be endowed of a third part of the profits; not so here. And in respect of estovers for a hearth, it has been seen that a woman has been ousted from dower by judgment.—*W. Thorpe*. All that you say is that we shall not have an action.

*Venire
facias on
Audita*

(33.) § John Somery, against whom execution on a Statute Merchant was heretofore awarded, had a writ

No. 33.

Assise, ou count en *Quod permittat* [a comuner ove totes A.D. 1342. maneres des avers, cest touz jours entendu ¹ a bestes saunz noubre, et auxi est ceo entendu en ceo bref de Dowere; et altre demande ne poms aver.—*R. Thorpe*. Si tiele pleynte fuit en Assise, ou tiele counte en *Quod permittat*],² ceo serra entendu de comune appendaunt; mes bref de dowere ne gist pas de comune appendaunt; et si ceste demande fuit mayntenu vous averez taunt pur vostre dowere come vostre baroun avoit ³ del entier; et si femme duist estre dowe de comune a bestes ⁴ saunz noubre la demande serreit par journées ou ⁵ en la terce parte de la terre.—*W. Thorpe*. Vostre challenge trenche a nostre accion, qar altre demande naveroms; qar femme qe serra dowe dun hundred ou dune baillie ele demandera la terce partie del hundred ou del baillie.—*R. Thorpe*. La poet ele bien,⁶ et serra dowe de la terce partie du profit; *non sic hic*. Et des estovers a un hastre⁷ homme ad vieu qe femme ad este ouste de ⁸ dowere par jugement.—*W. Thorpe*. Quant qe vous parles ⁹ est ¹⁰ qe nous naveroms pas accion.

(33.)¹¹ § Johan Somery, vers qi execucion sur estatut marchaut fuit agarde altrefoitz,¹² avoit ¹³ bref qe issit *Venire facias*¹² sur *Audita*

¹ entendu is omitted from Harl.

² The words between brackets are omitted from 25,184.

³ avoit is omitted from T.

⁴ The words a bestes are from L. alone.

⁵ 25,184, et; the word is omitted from T.

⁶ bien is from L. alone.

⁷ 16,560, hastre; 25,184, astre.

⁸ The words ouste de are omitted from Harl.

⁹ T. and 16,560, pernez; Harl., proves.

¹⁰ est is omitted from 25,184.

¹¹ From T., L., 16,560, and 25,184, but corrected by the record of the *Audita Querela, Placita de Banco*,

Easter, 16 Edw. III., R^o. 302. The proceedings were taken by John de Cheverestone, knight, against Nicholas de Theukesbury, clerk.

¹² Desceite, instead of *Venire facias*, in 16,560, 25,184, and Harl. The side note in L. is Execucion sur Statut Marchant.

¹³ In 16,560 there are substituted for the commencing words the words following:—"Johan Somery " vient par execucion sur Statut " Marchaut et suy autre"; in T. and 25,184 the words a la suyte are inserted before Johan.

¹⁴ avoit is from Harl. The other MSS. have sur.

No. 33.

A.D. 1342. which issued out of the Chancery to the Justices of the Bench, stating that the person who had execution had released. And the parties having been called, &c., *Venire facias* issued, and process was continued until the parties were at issue on the deed traversed; and then John Somery was non-suited. And afterwards John de Cheverstone came into the Chancery with this release made to John Somery, and said that he was enfeoffed by John Somery of parcel of the land, and prayed a writ of Deceit to the Justices, and he had it. And now he came and prayed a *Venire facias*, and a *Supersedeas* of the execution, to be directed to the Sheriff.—*Thorpe*. You shall not have a *Supersedeas*, for thus we should be always delayed in execution by such false suits; for hereafter you will be non-suited, and another will come and feign a similar suit and have a *Supersedeas* for the same reason, and so on *in infinitum*.—*HILLARY*. It is the common course in this Court when a *Venire facias* issues in such a case to enter a *Supersedeas*.—*Thorpe*. Yes, this has been done where the same person that executed the Statute has been a party, for by his non-suit afterwards he loses the advantage of the deed; and also if he should await the inquest and it should pass against him, he would suffer the penalty, while another in whose favour the deed had not been made would not suffer it. And, Sir, it would be a strange thing that this one should have the advantage of the deed when the person whose assignee he makes himself lost the advantage by non-suit.—*HILLARY*. One does not know whether he became Somery's assignee before the execution was awarded on the Statute or afterwards.—And note that a *Supersedeas* issued on this occasion.

No. 33.

hors de la Chauncellerie as Justices du Baunc comper-
nant qe celui qe avoit execucion avoit relese.¹ Et
vocatib partibus, &c., Venire facias issit, et proces
continue tanqe les parties furent a issue sur le fait
traverse; et puis Johan Somery fuit nounsny. Et
apres vient Johan de Cheverestone² en la Chaun-
cellerie ove³ cele relees fait a Johan Somery,⁴ et dit
qil estoit feffe par Johan Somery de parcele de la
terre, et pria bref de deceite as Justices, et avoit. Et
vynt ore et pria le *Venire facias* et *Supersedeas* a
Vicounte del execucion.—*Thorpe. Supersedeas* naverz
pas, qar issi serroms touz jours par tieux faux suytes
delayes dexecucion; qar apres ces hures vous serrez
nounsuy, et vendra un altre et feyndra⁵ autiele suyte
et averoit *Supersedeas* pas mesme le resone, *et sic in*
infinitum.—HILL. Cest⁷ comune cours de ceinz quant
Venire facias ist en tiele cas dentrer *Supersedeas*.—
*Thorpe. Oil,*⁸ ceo ad este fait ou mesme la persone qe
fist lestatut ad este partie, qar par sa nounsuyte apres
il ad perdu lavantage du fait; et auxi sil attendist
lenqueste et ele passat countre luy il⁹ averoit la penance,
quele altre naverait pas a qi le fait ne se fist pas. Et,
Sire, il est merveille qe cestuy averoit lavantage du fait
la ou celui qi assigne il se fait par sa nounsuyte perdist
lavantage.¹⁰—HILL. Homme ne soet¹¹ le quel il devynt
soun assigne avant lexecucion sur lestatut agarde ou
apres.¹² *Et nota* qe *Supersedeas* issit ore.¹³

A.D. 1342.
Querela,
suy par un
feffe, par
force dun
reles, la
ou son
feffour
perdi la-
vantage a
devant,
par sa
nounsuyte
de mesme
reles.¹
[Fitz.
Super-
deas, 16.]

¹ The words after *facias* are from 25,184 alone.

² T., *livere* lestatut a luy, instead of relese.

³ 25,184, Chiverston; T., L., and Harl., William Steventone.

⁴ 16,560, od.

⁵ The words *fait* a Johan Somery are from T. alone.

⁶ Harl., *fendra*.

⁷ 16,560, *ceo nest pas*.

⁸ 25,184, Sire.

⁹ T., *ele*.

¹⁰ In T. are added the words qar il eslist sa suyte par altre cause.

¹¹ T., *siet*; 25,184, *seet*.

¹² In T. is a reference (unfortunately illegible) to another part of the same MS. with the words *et ibi plenius*.

¹³ The last sentence is from T. alone. It is correct according to

No. 34.

A.D. 1343. (34.) § Assise of Novel Disseisin adjourned out of the county of Sussex into the Bench after a verdict which passed for the plaintiff. And the King had been prayed in aid before the assise was awarded, and then they had a writ to proceed. And the record also purported that at one time some of the Justices who came proceeded by a *Si non omnes*, which writ was not sent with the record nor entered in the record. And exception was taken for that they proceeded and continued the day *in pais* without warrant. —HILLARY. If the writ of *Si non omnes* be general for all the assises, the writ will be entered in the record, and will remain with the Justices as their warrant for taking other assises; and if the writ be for a particular assise it will be attached to the record and sent as parcel of the record.—And also exception was taken for that the tenant pleaded in bar that he was in wardship of the King, and that the possession of the plaintiff was by abatement on the King's possession, and that the plaintiff made himself a title by the feoffment of another, and prayed the assise, and did not say that it

Assise of Novel Disseisin in *pais* adjourned into the Bench, when the Court said that if the Justices had erred in taking the assise in *pais*, they would not now give judgment on that verdict. Geoffrey Scrope gave a contrary decision in the Northampton Eyre on a writ of Dower. 16 *Li. Ass.* 6.

No. 34.

(34.)¹ § Assise de novele disseisine ajourne hors² del counte de Sussexe en Baunk apres verdit qe passa pur le pleyntif. Et le Roi avoit este prie en eide avant lassise agarde, et puis⁴ avoint bref daler avant. Et auxi le record voleit qe a la foitz par⁵ *Si non omnes* les uns des Justices qe vyndrent alerent avant, quel bref ne fuit pas maunde ove le record nentre en le record. Et ceo fuit challenge, qils alerent avant et continuerent la journe en pais saunz garrant.—HILL. Si le bref de *Si non omnes* soit general pur totes les assises, le bref serra entre en le record et demora vers les Justices pur lour garrant de prendre altres assises; at si le bref soit pur une especial assise ceo serra attache al record et maunde come parcelle del record.—Et auxi fuit challenge qe le tenant pleda en barre qil fuit en la garde le Roi, et qe la possession le pleintif fuit par abatement⁷ sur la possession le Roi, et lautre se fist tittle par le feffement dun altre et pria assise, et ne dit pas qe devant ne pus⁸

A.D. 1342.
Assisa Nova Disseisine ajourne en Bank hors du pays, ou la Court dit qe si, en la prise de lassise en pays les Justices errerent, ils ne volent nient a ore sur cel verdit rendre jugement.
Contrarium fecit G. Scrope in *Itinere Northamptonie*, Bref de Dote, &c.

the record:—"Et petit breve Vice-comiti Devonie ad venire "faciendum predictum Nicolaum "super premissis responsurum, " &c., et ulterius, &c. Et ei conceditur returnabile hic a die "Sanctæ Trinitatis in xv dies. Et "interim Vicecomes cesset de "executione facienda predicto "Nicolao de terris et tenementis "quæ fuerunt predicti Johannis "de Somery die recognitionis predictæ, &c."

¹ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edw. III., R. 187. It there appears that the assise had been brought before Justices of Assise for the county of Sussex by Thomas de Hunstane against Edward de St. John, William Trussel, and several

others, in respect of the manor of Bridham (Birdham, Sussex).

² The words after *disseisine* are from 25,184 alone. In the case to which reference is made in the *Liber Assisarum*, issue was erroneously joined in the Common Bench and sent to the Eyre of Northampton before Scrope to be tried, and he notwithstanding took the inquest and gave judgment.

³ The words *ajourne hors* are omitted from 16,560.

⁴ puis is from T. alone.

⁵ Harl., al bref de instead of a la foitz par.

⁶ Harl., alierunt.

⁷ 25,184, abatu, instead of abatement.

⁸ The words *ne pus* are omitted from T.

16 Li.
Ass. 6.
[Fits.
Assise,
73; 16 Li.
Ass. 6.]

No. 35.

A.D. 1342. was before or after the King's possession, and so it was Error that the assise was awarded. Also it is in the record that the assise was without day, after the aid prayed of the King, through the absence of the Justices; and afterwards the defendants were re-attached, in which case again the party ought to have pleaded anew and prayed aid of the King; and this is not in the record, and therefore there is Error. And also you have no warrant to proceed to judgment by the writ which came to them, especially if you have not the writ.—*Derworthy*. What you say regarding the record is to assign Error, which can not be tried here.—HILLARY. You say what is true, and, if the Justices appointed to take assises erred in taking the assise, we will not give judgment upon the verdict when it is adjourned before us.—Afterwards in Trinity Term SCHARDELOWE expressed the same opinion.

Deceit, by
reason of

(35.) § Deceit, in respect of a Protection produced

No. 35.

la possession le Roi, et issi fuit ceo erreur qe lassise fuit A.D. 1842.
 agarde. Auxi en le record est qe lassise fuit saunz jour,
 apres leide prie¹ du Roi,² par absence des Justices, et
 puis reattaches, en quele cas de rechief partie duist aver
 plede de novel et³ prie eide du Roi; et ceo nest pas en
 le record, par quei il y ad erreur. Et auxi vous navez
 pas garrant daler avant a jugement par bref qe lour
 vynt, et si navez pas le bref.—*Derworthi*.—Quant qe
 vous parles a record⁴ cest pur assigner erreur qe ne puit
 ceinz estre trie.—*HILL*. Vous dites verite, mes, si les
 Justices dassise prendre⁵ errerent en la prise del assise,
 nous rendroms⁶ pas jugement sur ceo quant il est
 ajourne devant nous.⁷—*Postea Termino Trinitatis*
SCHAR. affirmavit idem.

(35.)⁸ § Deceite, de proteccion mys avant en delaiaunt Deceite,
par cause

¹ 16,560 and 25,184, priere.

² In 25,184 the word et is inserted after Roi.

³ The words plede de novel et are omitted from 16,560 and Harl.

⁴ T., 25,184, and Harl., regards.

⁵ prendre is omitted from 16,560, 25,184, and Harl.

⁶ 25,184, reddroms.

⁷ 16,560 and 25,184 end here. The record is of too great length (extending over both sides of two large skins of parchment) and of insufficient value to be printed in *extenso*. In it are recited at length several writs used at intermediate stages of the proceedings. The report may, however, perhaps be illustrated by the following information given in the roll. The assise came before William Scot and Richard de Kelleshulle, Justices of Assise in the county of Sussex, with whom was afterwards associated John Bray. It was brought before them owing to the death of Thomas Bacoun, who had

previously been one of the Justices. After the verdict had been taken the King sent a writ to the Justices of Assise to proceed to judgment. "Et, quia videbatur Curis ibidem quod expediens fuit quod partes prædictæ adjournarentur in Banco de audiendo inde iudicio suo super aliquas difficultates in eis dem recordo et processu existentes, datus fuit dies . . . de audiendo inde iudicio suo." After an adjournment to the Quinzaine of Trinity "Thomas de Hunsane non est pros."

⁸ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edw. III., R^o. 231. It there appears that the action was brought by Katharine, late wife of Peter de Wetewang, against Thomas le Ward. The action in which the alleged deceit occurred was a *Cui in vita* in respect of a messuage and land in Middleton (Yorkshire).

No. 36.

A.D. 1342. in Court, to the delay of the plaintiff's suit, and the
 the pro- deceit of the Court. And counsel for the plaintiff
 duction in counted how she brought a writ against the defendant,
 Court of a Protection who produced the King's Protection, *Quia protecturus*
quia pro-
fecturus
est, &c.,
 whereas
 the party
 remained
 [in Eng-
 land] for
 a month.
 est, and caused the parol to be put without day, whereas
 he was in England before the Protection was produced
 and for a month afterward.—*Blaykeston*. He has not
 counted for how long a time the Protection was to last,
 nor has he counted that the defendant did not go within
 the time during which the Protection was to last.
 —HILLARY. Do you say that by way of answer?—
Quære.—*Blaykeston*. He went within the time, and re-
 mained at Berwick; ready, &c.—And the other side said
 the contrary.—*Quære* where it shall be tried.

Annuity. (36.) § The Prior of Spalding brought a writ of
 Annuity against the Abbot of Grimsby, and demanded,
 &c. of an annual rent of four marks and four shillings,
 and made *profert* of a deed which purported—"Know
 " ye all that, whereas we are bound to the Prior and
 " Convent of Spalding in four marks and four shillings

No. 36.

la suyte le pleyntif, et deceite de la Court. Et counta coment il porta bref vers le defendant, qe mist avant proteccion le Roi *Quia profecturus est*, et mist² la paroule saunz jour, la ou il fuit en Engleterre avant la proteccion mys avant et apres par un mois.—*Blaik*. Il nad pas counte par combien de temps la proteccion fuit a durer,³ ne⁴ il nad pas dit⁵ qil nala pas⁶ dedeinz le temps qe la proteccion fuit a durer.⁷—*HILL*. Dites vous le par voie de respons?—*Quære*.—*Blaik*. Il ala dedeinz le temps et demora a Berwik; prest, &c.—*Et alii e contra*.—*Quære* ou il⁸ serra trie.⁹

A.D. 1342.
de Protec-
cion mis
avant *quia*
profec-
turus est,
&c., et
demora
apres pur
un moys.¹
[Fitz.
Repell, 4.]

(36.)⁹ § Le Priour de Spaldyng porta bref dannuite Annuite.¹⁰ vers Labbe de Grimsby¹¹ et demanda, &c., dun annuel rente de iiij marz et iiij¹² et moustra fait qe voleit¹³:—
“ Noverit universitas vestra quod,¹⁴ cum nos teneamur
“ Priori et Conventui de Spaldyng¹⁵ in quatuor marcis

¹ The words after Deceite are from 25,184 alone.

² 25,184, mist avant.

³ 25,184, durir.

⁴ T., et auxi.

⁵ Harl., dedit.

⁶ pas is omitted from T.

⁷ T., sil instead of ou il.

⁸ T., partie. Ward's plea, according to the record, was that he did set out “in obsequium Regis” and “in comitiva Thomæ de Rokeby” to Berwick, and there remained. “Et hoc prætendit “verificare, unde petit iudicium, “&c.” To this the replication was that he stayed at Middleton *absque hoc* that he set out in “obsequium, “&c.” “Et hoc petit quod inquiratur per patriam.” Issue was joined, but the result is not shown in the record, beyond the award of the Venire, which was directed to the Sheriff (presumably of Yorkshire).

⁹ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edw. III., B^o. 331.

¹⁰ Some words are added in 25,184 alone, but they are not quite consistent with the report.

¹¹ Grimsby is from the record; T., un Abbe; 16,560 and Harl., Labbe de D; 25,184, Labbe de B.; L., Labbe de C.

¹² The words et iiij¹² are supplied from the record.

¹³ The cited words, as printed in the text, are from the record itself. The notes will show how widely the MSS. of Y. B. differ.

¹⁴ The four commencing words, though represented below, are here omitted from the MSS. of Y. B.

¹⁵ The MSS. of Y. B., Abbati, instead of Priori et Conventui de Spaldyng.

No. 36.

A.D. 1342. " sterling, to be paid every year within the Octaves
" of St. Botolph, as is contained in a certain composition
" made between us and them in respect of certain
" tithes and other matters concerning Tetney and
" Cabourn, in which composition no certain place for
" making payment of the money mentioned is inserted,
" we promise and are bound to render and pay to the
" said Prior and Convent of Spalding every year, at
" the term aforesaid, the said four marks and four
" shillings at Spalding."—*Pole*. We demand oyer of
the deed by which this rent commenced, for this is only
a ratification of a charge commenced by another deed.—
Thorpe. Perhaps the composition was never sealed and
could not charge you, and we have nothing else to shew
the [original] charge; [still] judgment, inasmuch as
your predecessor acknowledged himself to be bound to
our predecessor, &c., whether this ought not to suffice.—
Pole. And we pray judgment, since you have nothing
to show the charge, which is only supposed by this deed.
—*HILLARY*. Since you have admitted the deed, it seems
to us that it charges you; wherefore the Court adjudges

No. 36.

" et quatuor solidis sterlingorum singulis annis A.D. 1342.
 " solvendis infra Octabas Sancti Botolphi,¹ ut² in
 " quadam compositione³ inter nos et ipsos⁴ super
 " quibusdam decimationibus et rebus aliis de Teteneye
 " et Kaburne juncta continetur, in qua locus certus
 " solutionis faciendæ non inseritur pecuniæ memoratæ,⁵
 " quod nos promittimus et tenemur reddere et⁶ solvere
 " dictis Priori et Conventui de Spaldyng singulis annis,
 " ad terminum prædictum, dictas quatuor marcas et
 " quatuor solidos apud Spaldyng.⁷—*Pole*. Nous deman-
 " dums oi del fait par quele ceste rente comencea, qar ceo
 " nest forsque ratificacion⁸ dune charge comence pas altre
 " fait.—*Thorpe*. Par cas la composicion ne fuit unques
 " enseale ne⁹ ne purra vous¹⁰ charger, et altre chose
 " navoms de la charge; jugement, desicome vostre prede-
 " cessour se conust estre tenuz a nostre predecessour, &c.,
 " si ceo ne deit¹¹ suffire.—*Pole*.¹² Et nous jugement, del
 " houre qe de¹³ la charge, qest forsque¹⁴ suppose par ceo
 " fait,¹⁵ vous navez rien.¹⁶—*HILL*. Del houre qe vous
 " avez connu le fait, il nous semble qe ceo vous charge; par

¹ The eleven words following *marcis* are represented in L. by the words *annui redditus*, and in the four other MSS. by the word *annuis*.

² MSS. of Y. B., *secundum quod*.

³ MSS. of Y. B., *per quamdam compositionem*, instead of *in quadam compositione*.

⁴ MSS. of Y. B., *Abbatem factam*, instead of *ipsos*.

⁵ The twenty-one words following *super* are represented in the MSS. of Y. B. by the words *decimis de B.*, et in dicta compositione non inseritur ad quem terminum nec ubi dictus redditus solvetur, noveritis per presentes.

⁶ The words *reddere et* are omitted from the MSS. of Y. B.

⁷ The nineteen words following *solvere* are represented in the MSS. of Y. B. by the words *dictas quatuor marcas annuatim in festo Nativitatis apud B.*

⁸ *ratificacion* is from L. alone; the other MSS. *recitacion*.

⁹ 16,560, *qe*.

¹⁰ 25,184, *nous*; the word is omitted from T. and Harl.

¹¹ 25,184, *deyve*.

¹² *Pole* is omitted from L.

¹³ *de* is omitted from T. and 25,184.

¹⁴ *forsque* is omitted from Harl.

¹⁵ In T. the word *et* is here inserted.

¹⁶ In T. and 25,184 are here added the words *qe charge, &c.*; *jugement*.

Nos. 37, 38.

A.D. 1542. that he do recover the annuity, and the arrears, and his damages assessed, &c.

Formedon in the Remainder for the heir in fee simple. And observe that non-claim of his ancestor was pleaded in bar, &c.

(37.) § Formedon in the remainder.—The demandant demanded as right heir of Alice, to whom the remainder was limited in fee simple.—*W. Thorpe* pleaded in bar on the ground of the non-claim of this Alice (as whose heir he demanded) on a fine levied on render, and said that she, being sole, and of full age, and within the four seas, &c., did not put forward her claim within the year; judgment.—*Gaynford*. She was covert of one A. at the time at which you suppose that the fine was levied: ready, &c.—*W. Thorpe*. Sole; ready, &c.—And so to the country.

Waste against two persons, where, on the Grand Distress, one came and the other did not. And

(38.) § Waste brought against two persons on a lease made to them for their lives by A,¹ on whose assignment the plaintiff claims. Process was continued as far as the Grand Distress. One came, and the other made default. And *Gayneford* counted against him who came that he, together with the other, against whom *Gayneford* was

¹ See Note (*), p. 241.

Nos. 37, 38.

quei agarde la Court qil recovere lannuite, et les A.D. 1342.
arrerages, et ses damages taxes, &c.¹

(37.)² § Forme de doun en le remeyndre.—Il demanda ⁴ Fourme
com dreit heir Alice, a qi le remeyndre fuit taille de fee de doun en
simple.—*W. Thorpe* pleda en barre par nouncleyne Remeindre
mesme cele Alice, com qi heir il demanda, sur fyne leve pur leir en
sur le rendre, et dit qe ele, sole,⁵ de pleyn age, deinz les fee simple.
iiij meres,⁶ &c., deinz lan ne myst pas soun cleyme; *Et vide*
jugement.—*Gayn*. Ele fuit coverte, al temps quant nouncleyne de
vous supposes la fyne estre leve, dun A.; prest, &c.—soun aun-
W. Thorpe. Sole; prest, &c.—*Et sic ad patriam*.⁷ plede en
&c.³ barre,

(38.)⁸ § Waste porte ⁹ vers deux dun lees fait a eux Waste vers
a lour ¹⁰ vies par A., de qi assignement le pleyntif cleyme. ij, ou a la
Proces continue tanqe la graunt destresse. Lun vynt, et grant des-
lautre fist defaute. Et *Gayn*. counta vers celui qe vynt tresse lun
qil, ensemble ¹¹ ove lautre, vers qi il countereit, ount vynt et
lautre ne
muye. Et

¹ According to the record the Abbot "venit et defendit vim et injuriam, quando, &c., et non potest dedicere quin prædictum scriptum sit factum prædicti Willelmi quondam Abbatis de Grymmesby prædecessoris, &c., "sen quin tenetur prædicto Priori in prædicto annuo redditu." Judgment was given for the Prior with damages and arrears, £31 13s. 4d.

² From T., L., 16,560, 25,184, and Harl.

³ The words after Remeindre are from 25,184 alone. The words en Remeindre are omitted from T., L., and 16,560.

⁴ The words Il demanda are omitted from T. and 25,184.

⁵ L., qil fuit soule, instead of qe ele sole.

⁶ T., miers; Harl., mers.

For the words from *W. Thorpe*

to the end there are substituted in T. the words *Et alii e contra*.

⁸ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edw. III., R^o. 827. It there appears that the action was brought by Matthew Michel against John brother of John le Gust, the elder, in respect of waste committed by him, together with the said John Gust, the elder, in a messuage, land, and wood in Canyton (probably Cannington, Somerset), "quæ tenet ad vitam suam de præfato Mathæo ex assignatione quam Johanna quæ fuit uxor Simonis de Asshetone, qui quidem Johanna et Simon illa præfatis Johanni et Johanni dimiserunt ad eundem terminum, inde fecit prædicto Mathæo."

⁹ L., fut.

¹⁰ So in all the MSS. of Y. B.

¹¹ T. and 25,184, ensembledment.

No. 39.

A.D. 1842. prepared to count, had committed waste in the lands, the person by making wells, and digging out stones¹ of a certain who came value, and selling them, &c.—*Derworthy*. We tell you answered alone, &c. that we are sole tenant, and were so on the day of the purchase of the writ; judgment of the writ. —*Gayneford*. If you held jointly when the reversion was granted to us, even though you may have since purchased a release and may be sole tenant, that does not effect an abatement of the writ; wherefore the law does not put us to answer.—*HILLARY*.—If the fact be so, plead it. (This is strange.)—And then *Gayneford* said that they held jointly on the day of the purchase of the writ; ready, &c.—*Derworthy*. We made protestation at the commencement that we did not admit the tenancy or the waste supposed by the writ, and we pray that this may be entered, for otherwise when he brings a good writ we shall not be able to traverse it.—*HILLARY*. It shall be so.—And the averment was admitted. (But this is strange, for it is no plea.)

Dower.
And ob-

(39.) § Dower. At the first day the demandant was essoined, and the tenant came ready to render dower in

¹ The "quarer" of the report and by the word "petras" in the the *quareram* of the corresponding verdict.
part of the record are represented

No. 39.

fait wast en terres, en fesaunt putes, et fowaunt quarer et vendantz² a la value, &c.³—*Derworthi*. Nous vous dioms qe nous sumes soul tenant, et fumes jour du bref purchase; jugement du bref.—*Gayn*. Si vous tenistes⁴ joint⁵ quand la reversion nous fuit graunte, tut eiez vous puis purchase relees et soiez soul tenant, ceo⁶ nest pas al abatement⁷ du bref; par quei ley ne nous mette a respondre.—*HILL*. Si le fait soit tiel, pledez⁸ (*Quod mirum est*).—Et puis *Gayn*. dit qil tyndrent jointement⁹ jour du bref purchase; prest, &c.—*Dereworthi*. Nous fimes¹⁰ protestacion a comencement qe nous ne conissoms¹¹ pas la tenance¹² ne le wast qest suppose par bref, et ceo prioms qe soit entre, qar autrement quant il portera bon bref nous nel purroms traverser.—*HILL*. Si serra.—Et lavrement fuit resceu. (*Quod mirum est*, qar ceo nest pas plee.)¹³

(39.)¹⁴ § Dowere. La demandante al primer¹⁵ jour essone, et le tenant vynt prest a rendre douwer¹⁶ pur

A.D. 1342.
cely qe
vynt re-
spondi
soul, &c.¹
[Fitz.
Briefe,
654.]

Dowere.
Et vide

¹ The words after Waste are from 25,184 alone.

² 25,184 and Harl., voidaunt.

³ et quareram inde vendendo pretii quadraginta solidorum, in the record, in which also there are several other allegations of waste committed.

⁴ Harl., tenitez; 16,560, tenex.

⁵ L. and 25,184, joint.

⁶ 16,560, ore.

⁷ Harl., albatement, instead of al abatement.

⁸ Harl., pleidez.

⁹ 25,184, jointement.

¹⁰ L. and 16,560, feismes; 25,184, feymes; Harl., feimes.

¹¹ L. and 25,184, conussoms.

¹² The words a terme de vie are here inserted in Harl.

¹³ According to the record issue was joined as to whether the brothers were joint tenants on the day of the purchase of the writ. A verdict was given at *Nisiprius* that they did hold jointly and did commit waste. Judgment was given for the plaintiff to recover the tenements, "per visum juratorum, &c., et etiam viginti et duas libras, et undecim solidos, pro triplo damnorum per formam Statuti, &c." Execution was awarded by *Elegit*.

¹⁴ From T., L., 16,560, 25,184, and Harl.

¹⁵ 16,560, premer.

¹⁶ The word douwer is omitted from all the MSS. but L.; for rendre there is substituted, in 16,560, respondre.

Nos. 40, 41.

A.D. 1842. order to escape damages.—HILLARY. Judgment cannot serve as to be given unless demand be made, and the essoiner cannot make it.—*Blaik*. He can do so; for if the tenant made default, the Grand *Cape* would issue, and that could not be without a demand; and so judgment can be given now.—And notwithstanding, the essoin was adjudged and adjourned.—*Thorpe*. We pray that you enter that we are ready to render dower in order to escape damages.—HILLARY. It shall not be entered, for nothing is lost to you. (As meaning to say that a woman who is herself the cause of delay shall not recover damages.)

Fine of a knight's fee.

(40.) § *Rokel*. Hugh Talemache and J. his wife acknowledge one knight's fee and 100s. of rent to be the right of A., and grant the homage and the services of B. and A. his wife to A: and his heirs with warranty.—HILLARY. Are the 100s. issuing out of the same fee?—*Rokel*. Yes.—HILLARY. Then this writ is not well conceived.—*Thorpe*. You will hear about that in the *Per quæ servitia*, but not now.—*Quære*.

Jurata Utrum

(41.) § *Jurata Utrum* against John son of Thomas

Nos. 40, 41.

estouttre des damages.—HILL. Homme ne puit faire agard saunz ceo qe demande fuit fait, et lessoneour ne la puit pas faire.—*Blaik*. Si poet; qar si le tenant fist defaute, graunt *Cape* issera,² et ceo ne purroit estre saunz demande, et auxi pout il ore.—Et *non obstante* lessone fuit ajugge³ et ajourne.—*Thorpe*. Nous prioms qe vous entres qe nous sumes prest a rendre douwer⁴ pur estouttre des⁵ damages.—HILL. Noun serra; qar rien vous depiert⁶ (*quasi diceret* la femme qe se delaie mesme⁷ ne recovers pas damages).

A.D. 1342.

de es-
oigne.¹
[Fitz.
Damage,
88.]

(40.)⁸ § *Rokel*. Hughe Talemache¹⁰ et J. sa femme conissent¹¹ une fee de chivaler et cs. de rente estre le dreit A. et grauntent le homage et les services B. et A. sa femme a A. et ses heirs ove garrantie.—HILL. Sount les cs. issauntz de mesme la fee?—*Rokel*. Oil.—HILL. Donques nest pas ceo bref bien conceu.—*Thorpe*. De ceo orrez vous en le *Per quæ servitia, sed non nunc*.—*Quære*.

Finis dune
fee de
chivaler.⁹
[Fitz.
Briefs,
655.]

(41.)¹² § Jure de *Utrum* vers J. le fitz Thomas de

Jure de
Utrum vers

¹ The words after Dower are from 25,184 alone. Some unimportant words are substituted in L. in a later hand.

² 16,560, 25,184, and Harl., *istra*.

³ Harl., *agarde*.

⁴ Douwer is from L. alone.

⁵ pur estouttre des is from L. alone; the other MSS., pur les.

⁶ The report ends here in L., 16,560, and Harl.

⁷ mesme is omitted from 25,184.

⁸ From T., L., 16,560, 25,184, and Harl.

⁹ The words after *Finis* are from 25,184 alone.

¹⁰ L., *Calemache*; 16,560, *Tha-
lengh*.

¹¹ L., *conussent*; 16,560, *con-
sount*.

¹² From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edw. III., R^o. 355. It there appears that the action was brought by Richard de Retford, parson of the church of Fobbing (Essex), against John son of Thomas de Hodele. The only MS. in which the names are given is L., and there the parson appears as J. de Rotteford. Three of the other MSS. mention the tenant only as un enfant, and Harl. as un enfant deins age. One messuage and four acres of land in Fobbing were in dispute. The parson alleged "quod
" quidam Willelmus de Wym-
" bourne, quondam persona ecclesie
" prædictæ, prædecessor, &c., fuit

No. 41.

A.D. 1342. de Hodele.—*Pole*. We tell you that one A., who was against an infant a bastard, held this land of our father, whose heir we are, from whom the seignory descended to us as son and heir, and we were seised through the hand of A.; and we tell you that A. died without heir of his body, and therefore we are in as of our escheat by reason of the seignory which descended to us; and we are under age, and we pray our age.—*W. Thorpe*. We claim nothing in the services, but we pray the Jury for the demesne, in which your ancestor never had anything, as you yourself shew.—*R. Thorpe*. Since you do not deny that the seignory descended to us, which is the cause of the escheat, and makes us tenant of the freehold, whether we will or no, as much as if it had descended to us, judgment. And if such a seignory were allotted to a parcener, and she afterwards entered by way of escheat, she would have aid of her co-parceners.—*W. Thorpe*. Never.—*HILLARY*. Other learned men have said that she would.—*W. Thorpe*. We pray the Jury.—And then the Court was minded to have adjudged that the parol should demur, wherefore *W. Thorpe* said that A. did not hold of Thomas the father of John, nor had John or his father ever anything in the seignory; ready, &c., by the jury.—*R. Thorpe*. You have previously pleaded in law that, notwithstanding the fact such as we alleged, we shall not have our age, not denying the fact to be such as we supposed; wherefore you shall not now be admitted to traverse it.—*HILLARY*. He did not

No. 41.

Hodele.—*Pole*. Nous vous dioms qun A.³ qe fuit A.D. 1342. bastard, tient ceste terre de nostre pere, qi heir nous un enfant deinz age, sumes, de qi la seignurie descendi a nous com a fitz et qe fuit heir,⁴ et nous seisi par la mayn A. ; et vous dioms qe A. entre la morust saunz heir de soun corps, par quei nous sumes terre com einz come en nostre eschete par cause de la seignurie qe par cause de nous descendi ; et sumes deinz age,⁵ et prioms nostre age. gnurie descendue a —*W. Thorpe*. En les services nous ne clamoms rien, ly de part mes prioms la jure del demene, en quele vostre auncestre sa pere. navoit unqes rien, come vous moustres mesmes.—*Et nota la R. Thorpe*. Del hure qe vous ne dedites pas qe la Court li seignurie nous descendi, quele est cause del eschete, et voleit aver nous fait tenant del fraunc tenement, maugre le nostre, grante lage,¹ *non obstante* qe navoit que navoit si avant come ceo nous fuit descendu, jugement. Et si mye la tiele seignurie fuit allote a une parcenere et ele entrast demene apres par voie deschete ele avereit eide de ses parceners. par descente.² —*W. Thorpe*. Jammes.—*HILL*. Altres sages ount dit [Fitz. Age, 46.] qe si.—*W. Thorpe*. Nous prioms la Jure.—Et puis la Court fuit del avis daver agarde la paroule a demorer, par quei *W. Thorpe* dit qe A. ne tient pas de Thomas pere Johan, ne Johan ne soun pere navoit unqes rien en la seignurie ; prest, &c., par la Jure.⁶—*R. Thorpe*. Devant avez plede en ley qe nient countresteant tiel fait com nous allegeames⁷ qe nous naveroms pas nostre age, nient dedisaunt le fait estre tiel come nous supposames⁸ ; par quei a ore a traverser le ne serrez resceu.—

"seisitus de prædictis tenementis
"in dominico suo ut de feodo et
"jure ecclesie sue prædictæ, tam-
"pore pacis, tempore Henrici Re-
"gis proavi domini Regis nunc,
"qui eodem tempore tenementa
"illa alienavit, &c."

¹ MS., leide.

² The words after *Utrum* are from 25,184 alone.

³ Simon le Blake, according to the record.

⁴ The words et heir are omitted from T., 16,560, and 25,184.

⁵ The words et sumes deinz age are from L. alone ; the other MSS., judgement.

⁶ The issue, as accepted, was according to the record, "quod prædictus Simon le Blake non tenuit de prædicto Thoma patre, sicut prædictus Johannes dicit."

⁷ 16,560, allegeasoms.

⁸ L., allegeames.

No. 42.

A.D. 1342. abide judgment on that, but made protestation that he did not admit, &c., wherefore see whether you will say anything else.—*Pole*. Certainly not, Sir, for we are pleading for an infant.—*HILLARY* called the Jury, who came and took the oath.—*HILLARY* to *Pole*. Do you wish that the cause of your praying your age should be enquired of?—*Pole*. Yes, Sir.—And upon that the Jury was taken, by which it was found that A. did not hold of Thomas the father of the infant, &c., and, moreover, that it was frankalmoign whereof the parson's predecessor was seised in the time of King Henry, and which he aliened.—Therefore it was adjudged that the parson should recover.—And note that after verdict, and before judgment *Pole* alleged that the infant was wrongly named, and prayed that enquiry might be had thereof.—*W. Thorpe*. It comes too late.—*Quære*, for the infant did not abide judgment thereon.

Dower,
where the
tenant
vouched,
and this
voucher
was
counter-
pleaded,
wherefore
he waived
this
voucher,
and
vouched
another
person, and
to this he

(42) § Dower, where A. was vouched as cousin and heir at common law, and the same A. and B. and D. as cousins and heirs of G. by reason of gavelkind lands, to be summoned in Kent, &c.—*Thorpe*. How cousins?—And note that it was said that it was not necessary to say how, if the heir was not vouched as under age; and yet he did so.—*Thorpe*. Whereas he vouches them as cousins and heirs by the custom, and has shewn how they are cousins, we tell you that there is one J. who is a co-heir, and is omitted in this voucher; judgment of the voucher.—*Gayneford* imparled, and came back and vouched E. son of F. Peverelle, &c.—*Thorpe*. You shall

No. 42.

HILL. Il demora pas la, mes fist protestacion qil ne A.D. 1342.
 conust pas, &c., par quei veiez si vous voillez altre chose
 dire.—*Pole*. Nanyl, certes, Sire,¹ qar nous pledoms pur
 un enfaunt.—HILL. demanda la Jure, qe vynt, et jura.²
 HILL. a *Pole*. Voillez qe la cause de vostre age priere
 soit enquis?—*Pole*. Sire, oil.—Et la Jure sur ceo pris,
 par quel fuit trove qe A. ne tient pas de Thomas pere
 lenfaunt, &c., et outre qe ceo fuit fraunc³ almoigne
 dount soun predecessour fuit seisi en temps le Roi Henri,
 et aliena; par quei fuit agarde qe la persone recoverast. *Judicium*.⁴
 —*Et nota*, qe apres verdit, avant jugement, *Pole*
 allegaa qe lenfaunt fuit malement nome, et pria qe ceo
 fuit enquis.—*W. Thorpe*. *Tarde venit*.—*Quære*, qar
 lenfant ne ⁵ demora pas ⁶ sur ceo.⁷

(42.)⁸ § Dowere, ou A. fuit vouche com cosyn⁹ et Dowere,
ou le
tenant
 heir a la comune ley, et ¹⁰ mesme cely A. et ¹¹ B. et D,¹²
 com ¹³ cosyns et heirs G., par cause des terres gavel-
 kyndes,¹⁴ qe serrount somons en Kent, &c.—*Thorpe*. voucha,
et cel
voucher
 Coment cosyns?—*Et nota* qe fuit dit qe ceo ne bosoigne
 pas dire, si heir ne fuit vouche com deinz age; *et tamen*
fecit.—*Thorpe*. La ou il les vouche com cosyns et heirs
 par usage, et ad moustre coment cosyns, nous vous contre-
plede, par
quei il
weyva cel
voucher, et
voucha un
altre, et a
ceo fuit
 dioms qil y ad un J. qest coheir, &c., entrelesse en ceo
 voucher; jugement de voucher.—*Gayn*. emparla, et
 revynt, et voucha E. le fitz E. Peverelle, &c.—*Thorpe*.

¹ Sire is from L., alone.

² The words qe vynt et jura are omitted from L.

³ 25184, fraunche.

⁴ The side note is from Harl. alone.

⁵ ne is from L. and 25,184 only.

⁶ pas is omitted from Harl.

⁷ In L. alone are added the words: "*Credo quod causa fuit pur*" "ceo qe la jure fuit agarde seur la" "primere plee. *De hoc Pasche*

"*tertio*, Symond de Woxbrigge, "&c." The case to which reference is made is probably No. 20 of Easter, 3 Edw. III. ff. 16-17.

⁸ From T., L., 16,560, 25,184, and Harl.

⁹ L., fitz.

¹⁰ et is omitted from Harl.

¹¹ et is from Harl. alone.

¹² 16,560, C.

¹³ com is omitted from T. and L.

¹⁴ 16,560, gavelkyndeys.

No. 42.

A.D. 1842.
was ad-
mitted by
award of
the Court,
&c.

not be admitted to that, for you have previously vouched, and that voucher we have counterpleaded, and you do not maintain it, and you do not give any other answer; judgment, and we pray seisin, &c.—HILLARY. He gives another answer, and if you had counterpleaded it he would by Statute¹ be received to vouch another.—*Thorpe*. Thus it would follow that he would have voucher *in infinitum*.—HILLARY. Will you not say anything else to oust him from this voucher?—*Thorpe*. We pray that this voucher may be entered; and we will imparl.—HILLARY. So it shall be.—*Thorpe*. You shall not be admitted to this voucher, for we tell you that one Thomas Bokland, the demandant's husband, was seised and enfeofed John Bokland, which John aliened to W. Stulpe, and took back an estate to himself and K. his wife (against whom this writ is brought) and his heirs; J. Bokland died; and after his death K. took to husband E. Peverelle, the father of E., who is vouched; and after the death of E. our writ of Dower is brought against K., whom W. Stulpe has warranted, which W. is warranted by J. son and one of the heirs of J. Bokland; so in respect of the tenancy which E. Peverelle had only in the freehold of his wife she is warranted by her feoffor W. Stulpe, without this that E. who is vouched or any of his ancestors ever had any other estate but only the tenancy by the coverture in respect of which his wife is warranted as above; judgment whether you ought to be admitted to this voucher.—*Gayneford*. The law does not put me to answer to what you state; and since you do not counterplead our voucher either by common law or by special law, judg-

¹ 3 Edw. I. (Westm. 1) c. 40.

No. 42.

A ceo navendres pas, qar vouz avez vouché devant, quel nous avoms countreplede, et ceo ne meyntenes vous pas [et altre respons ne dones; jugement, et prioms seisine, &c.—HILL. Il doune altre respons, et si vous lusse countreplede],² par statut il serroit resceu de vouché altre.—*Thorpe*. Issi ensiwereit qil avereit vouché infinit.³—HILL. Altre chose ne voillez dire de luy ouster de cel vouché?—*Thorpe*. Nous prioms qe ceo vouché soit entre, et nous emparleroms.—HILL. Si serra.—*Thorpe*. A ceo vouché ne serrez resceu, qar nous vous dioms qun Thomas Boklond, baroun la demandante,⁴ fuit seisi et feffa Johan Boklond, quel Johan aliena a⁵ W. Stulpe,⁶ et reprist estat a ly et K. sa femme, vers qi ceo bref est porte, et a ses heirs; J. Boklond morust; apres qi mort K. prist a baroun E. Peverelle,⁷ pere E., qest vouché; et apres la mort E. nostre bref de dowere est porte vers K., a qi W. Stulpe⁸ ad garranti, et le quel W. est garranti par J. fitz et un des heirs J. Boklond; issint de la tenance⁹ qe E. Peverelle qe avoit forsque en le fraunc tenement sa femme ele est garrantie par soun feffour W. Stulpe,¹⁰ saunz ceo qe E. qest vouché ou nul de ses auncestres unques altre estat avoient forsque la tenance par couverture de¹¹ quele sa femme est garrantie *ut supra*; jugement si a ceo vouché devez estre resceu.—*Gayn*. A ceo qe vous parles ley ne moy mette a respondre; et del heure qe par comune ley ne par ley¹² especiale ne countrepledez nostre vouché, jugement.—

A.D. 1342.
resceu par
agarde,
&c.¹
[Fitz.
Counterple
de Vouch,
36.]

¹ The words after Dowere are from 25,184 alone.

² The words between brackets are omitted from 25,184.

³ 16,560, enfaunt.

⁴ The words baroun la demandante are omitted from T. and 25,184.

⁵ 25,184, qe enfeffa, instead of Boklond, quel Johan aliena a.

⁶ 25,184, Sculpe; L. Terripe.

⁷ Harl., Puderel.

⁸ 25,184, Sculpe; 16,560, Stamp.

⁹ 25,184, les tenants.

¹⁰ L., Stuple; 25,184, Sculpe.

¹¹ 25,184, par.

¹² The words par ley are omitted from 16,560 and 25,184, and the word pas from Harl.; L. has especial ley, instead of ley especiale.

Nos. 43, 44.

A.D. 1342. ment.—HILLARY. If you abide judgment, we shall hold the fact to be such as he has alleged.—And note that the Court was minded to have ousted him from the voucher; wherefore *Gayneford* waived it and traversed, saying that the husband was never seised, &c.—And the other side said the contrary.

Execution
on a re-
covery
sued by an
heir, and
the exist-
ence of
another
alleged.

(43.) § Execution on a recovery given for the ancestor was demanded for the heir.—*Thorpe*. We tell you that he who demands has an elder brother.—And he was put to say where.—*Rokel*. There is no such person; ready, &c.—*Thorpe*. You must say that there never was any such person, or that he is dead, or that there is such a person whose existence ought not to hurt you.—*Rokel*. There never was such a person; ready, &c.—And *Thorpe* alleged his existence, as before.—And the jury shall come from the neighbourhood where his existence is alleged.

Cosinage.
And ob-

(44.) § Cosinage. The descent was made from Walter to Richard as brother and heir, from Richard to

Nos. 48, 44.

HILL. Si vous demorez en jugement nous tendrons le fait tiel com il ad¹ allegge.—*Et nota* qe Court fuit en oppinion del aver ouste del voucher, par quei *Gayn.* le weyva,² et traversa qe le baron³ unques seisi, &c.—*Et alii e contra.* A.D. 1842.

(43.)⁴ § Execucion hors dun recoverir⁷ taille pur launcestre fuit demande pur leir.—*Thorpe.* Nous vous dioms qe celui qi demande ad un frere eigne.—Et fuit mys a dire ou.—*Rokel.* Il y ad nul tiel ; prest, &c.—*Thorpe.* Vous direz quil y avoit unques nul tiel, ou quil est mort, ou qil y ad un tiel qi estre ne vous deit nuir.⁸—*Rokel.* Il ny avoit unques nul tiel ; prest, &c.—Et *Thorpe* alleggea lestre *ut prius.*⁹—Et pais vendra ou lestre est allegge.⁶ Execucion hors dun recuere suy par heir, et lestre dun⁶ autre allegge.⁶

(44.)¹⁰ § Cosinage. Descente fait de Walter a Richard¹¹ com a frere et heir, de Richard a Walter com Cusinage. *Et vide de*

¹ Harl., vous.

² L., veyva.

³ Harl., son baron ; the words are omitted from the other MSS.

⁴ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edw. III. R^o. 365. It there appears that a *Sci. fa.* was brought by Thomas Spendelowe, as heir of Isabel, late wife of Richard Spendelowe, against Stephen atte Ovene on a recovery of three acres of land in Leatherhead (Surrey).

⁵ MS., ou.

⁶ The words after recuere are from 25,184 alone ; and the words hors dun recuere are omitted from 16,560, 25,184, and Harl.

⁷ Harl., reconissance.

⁸ L., nueire ; 16,560, niyer ; 25,184, nuyr.

⁹ According to the record, Stephen pleaded that John son of Isabel, and an elder brother of

Thomas, was living at Wainfleet, in the county of Lincoln. Thomas replied, "quod non est aliquis Johannes frater suus antenatus, nec unquam fuit." Upon this issue was joined. The *Venire* was awarded, but Stephen did not appear on the day given, and Thomas had execution.

¹⁰ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edw. III., R^o. 216. It there appears that the action was brought by Thomas son of Thomas de Musegrove against Simon le Megre of Tackley, in respect of a messuage and land in Tackley (Oxfordshire), whereof Walter de Prestcote, the *consanguineus* of Thomas, was seised.

¹¹ All the MSS. of Y.B. are very incorrect with regard to the names, as to which see note 7, p. 255.

No. 45.

A.D. 1342. Walter as son, and from Walter to A.,¹ &c.—*Derworthy*.
 serve as to Heretofore his father, through whom he makes his
 exception descent, brought a writ of Escheat, &c., as cousin and
 taken heir of the same person on whose seisin he now
 touching demands, and made his descent from Walter to Walter
 descent. as son; judgment of the descent.—*Gayneford*. You do
 not deny this descent to be good; and although my
 father made a bad descent, I shall not do so; judgment.

Cosinage, (45.) § Cosinage against a man and his wife.—
 on the

¹ As to the descent really alleged, see note 7, p. 255.

No. 45.

a fitz, de Walter a A., &c.—*Derworthi*.² Altrefoitz A.D. 1342.
descent
chalance.¹ porta soun pere, par my qi il fet³ sa descente [bref deschete, &c., com cosyn et heir mesme celuy de qi seisine il demande a ore, et fist sa descente de Wauter a Wauter com a fitz; jugement de la descent].⁴—[*Gayn*. Vous ne dedites pas ceste descente estre bon; et mes que moun pere fist malveis descente⁵]⁶ jeo nel fra pas;⁷ juggement.

(45.)⁸ § Cosinage vers un homme et sa femme.—Cusinage, de la mort

¹ The words after *Cusinage* are from 25,184 alone.

² Harl., *W. Thorpe*.

³ T., face.

⁴ The words between brackets are not in 16,560.

⁵ descente is omitted from 16,560.

⁶ The words between brackets are not in 25,184.

⁷ According to the record, the demandant traced the descent from Walter, the *consanguineus*, to his brother and heir, also named Walter, from the latter to Matilda as daughter and heir, from Matilda to Thomas as son and heir, and from Thomas to the demandant, Thomas, as son and heir. The tenant pleaded that the demandant's father had brought a writ of Escheat against him, supposing that one William de Prestcote (who was a bastard, and died without heir of his body) held certain tenements of Walter de Prestcote the *consanguineus*. On that occasion the descent was traced from Walter to his brother Richard as heir, from Richard to Walter as son and heir, from Walter to Matilda as daughter and heir, and from Matilda to Thomas, father of the present demandant. He therefore prayed judgment whether the demandant "sic variando descensum prædicti

"Thomas patris sui responderi debeat." Thomas replied, repeating the descent as in his count, "et licet prædictus Thomas pater suus ad breve suum de escaeta quod tulit, et quod fuit de alia natura, et de aliis tenementis, fecit descensum juris indebite de prædicto Waltero de Prestcote consanguineo, &c., cuidam Ricardo ut fratri et heredi, &c., petit iudicium si ipse ad descensum suum prædictum quem fecit ad breve istud de consanguinitate responderi non debeat, ex quo paratus est verificare quod prædictus Walterus pater prædictæ Matildis fuit frater et heres prædicti Walteri de Prestcote." Several adjournments follow, but nothing further.

⁸ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edward III., R^o. 818d. It there appears that the action was brought by Thomas Doraunt, and William son of William Mandeville, against John de Chilterne and Matilda his wife, in respect of messuages, lands, &c., in Edmon-ton (Middlesex), whereof Matilda daughter of William atte Forde the younger, the "*consanguinea*" of the demandants, was seised.

No. 46.

A.D. 1342. *Thorpe*. We say that A. his cousin, on whose seisin he death of one who was [alleged to be] party with the demandant in the plea; and for this reason he was compelled to answer as to the person's existence, and could not aver [the death of the ancestor]. demands, is the same person whom he has named as tenant in his writ; judgment of the writ.—*Derworthy*. That is to our action; it is tantamount to saying that our ancestor is alive; she is dead; ready, &c.—*Thorpe*. You shall not be admitted to that without answering us, for by your writ you suppose her to be living.—*Derworthy*. I will aver the death of my ancestor, and that is sufficient for me.—*Thorpe*. It is not; where your ancestor is party with you, you shall not be admitted to aver her death.—*Derworthy*. She who is named as tenant is a different person from our ancestor; ready, &c.—And he was put to assign a diversity of father and mother.—And he did so.—And thereupon they were at issue.

Trespass,
on the
ground of
non-repair
of walls

(46.)¹ § *Blaykeston* counted how that tortiously the defendant did not repair four perches of the wall, &c., which he ought to repair (by reason of certain lands which he held) against the flow of the Humber, and which he

¹ See Y. B., Easter 15 Edw. III. | case relating to the repair of Humber walls.

No. 46.

*Thorpe.*² Nous dioms qe A. sa cosyne, de qi seisine³ il demande, est mesme la persone qil ad nome tenant en soun bref; jugement du bref.—*Derworthi.* Cest a nostre accion; taunt amounte qe nostre auncestre est en vie; mort,⁴ prest, &c.—*Thorpe.* A ceo navendres pas saunz respondre a nous, qar vous la supposez par bref en vie.—*Derworthi.* Jeo voille averer la mort moun auncestre,⁵ et ceo moi suffit.—*Thorpe.* Noun fait; la ou vostre auncestre est partie a vous,⁶ vous⁷ ne serrez pas resceu daverer sa mort.—*Derworthi.* Cele qest nome tenant⁸ est altre persone qe nest⁹ nostre¹⁰ auncestre; prest, &c.—Et fuit mys a doner diverseite de pierre et mere.—*Et ita fecit.*—Et sur ceo sount a issue.¹¹

(46.)¹² § *Blaike* counta coment a tort ne reparaille iij. perches del walle,¹³ &c., queux il deit reparailer, par resun de certaines terres queux il tient, countre les flotes de Humbre,¹⁴ les queux luy et les terre tenantz qil tient

A.D. 1342.
un qe fuit
parte a luy
en ple, par
quei il fuist
chace de
respondre
a son estre,
et ne put
mye
averrer.¹

Trans-
gressio par
cause de
nient re-
parailer
de wales

¹ The words after Cusinage are from 25,184 alone.

² *Thorpe* is omitted from Harl.

³ seisine is omitted from Harl.

⁴ mort is omitted from Harl.

⁵ 25,184, mauncestre; L. and Harl., ma auncestre, instead of moun auncestre.

⁶ T. and L. nous.

⁷ vous is omitted from Harl.

⁸ tenant is from L. alone.

⁹ nest is from L. alone.

¹⁰ 16,560, vostre.

¹¹ According to the record the tenants pleaded that Matilda, supposed to be the *consanguinea*, and dead, "est illa et eadem Matildis" "quæ est uxor prædicti Johannis" "de Chilterne, et nominatur in" "brevi simul cum ipso Johanne" "viro suo tanquam tenens, &c." "Unde petant judicium de brevi." The demandants replied that she was a different person "quia dicant

"quod eadem Matildis uxor Jo-
"hannis fuit filia cujusdam
"Willelmi Elys de Buntingford,
"et non filia prædicti Willelmi
"atte Forde junioris." The
tenants rejoined that she was the
daughter "Willelmi atte Forde
"junioris, nata et generata infra
"sponsalia de quadam Lora uxoris
"ipsius Willelmi atte Forde."
Issue was joined thereon, and the
Venire was awarded, but on a day
given the demandants failed to
appear, and judgment passed for
the tenants.

¹² From T., L., 16,560, 25,184,
and Harl., but corrected by the
record *Placita de Banco*, Easter,
16 Edw. III., R^o 304. It there
appears that the action was brought
by Thomas de Bernardstone
against John de Heighlynge.

¹³ 25,184, wast.

¹⁴ Harl., Hundre.

No. 46.

A.D. 1342. and the tenants of the lands that he holds have always
against the repaired. And he counted that, through default in repair-
flow of ing, the water had overflowed the wall, &c., and drowned
the Hum- his meadow for a certain time, tortiously and to his
ber. damage, &c.; wherefore he had often prayed the defen-
dant to repair, &c.—*Gayneford*. We tell you that he
and the ter-tenants have not always repaired; ready, &c.
—And the other side said the contrary.

No. 46.

ont de tut temps reparaille. Et counta qe par defaute A.D. 1342
de reparailer, lewe surunde le walle, &c., et ad nee ^{contre les}
soun pree par certeyn temps (par quei il ad sovent prie ^{flotes de}
de reparailer, &c.), atort et a ses damages, &c.—*Gayn.* ^{Humbre.}
Nous vous dioms qe luy et les terre-tenantz nount pas
reparaille de tut temps ; prest, &c.—*Et alii e contra.*³

¹ *Transgressio* is from 16,560, 25,184, and Harl., the remaining words of the side note from 25,184 alone. In L. the side note is Reparailment.

² Harl., nae ; 25,184, noe.

³ The count or declaration and subsequent proceedings appear in the record as follows :—" Unde
" idem Thomas, per Adam de Lym-
" berghe attornatum suum, dicit
" quod cum prædictus Johannes rati-
" one terrarum et tenementorum,
" videlicet, quatuor bovatarum
" terræ cum pertinentiis, quæ tenet
" in Magna Cotes, reparare et
" emendare debeat, ipseque et
" omnes alii terras et tenementa
" prædicta tenentes a tempore, &c.,
" semper hactenus reparare et
" emendare consueverint, videlicet,
" ex pilis, clais, et maeremio,
" quatuor particatas ejusdem
" walliæ in eadem villa, videlicet,
" in le Northwro, pro salvatione,
" &c., contra fluxus aquæ de Hum-
" bre, ab antiquo factæ, &c., præ-
" dictus Johannes, licet sæpius
" requisitus, quatuor particatas
" prædictas reparare et emendare
" non curavit, per quod ducentæ
" acræ prati ipsius Thomæ in
" eadem villa ob defectum, &c.,
" per fluxus aquæ, &c., superun-
" datæ fuerunt, videlicet, a die
" Lunæ proxima post Quindenam
" Sancti Michaelis Archangeli,
" anno regni domini Regis nunc

" decimo usque diem impetrationis
" brevis, scilicet duodecimum diem
" Maii anno regni ejusdem Regis,
" &c., quintodecimo, idemque
" Thomas proficuum prædicti
" prati amisit, videlicet, per totum
" tempus prædictum, ad damnum
" ipsius Thomæ sexaginta libra-
" rum, et inde producit sectam,
" &c."

" Et Johannes, per Thomam de
" Sixhille attornatum suum, venit
" et defendit vim et injuriam, &c.
" Et bene defendit quod ipsi et
" alii tenentes prædictas quatuor
" bovatas terræ, quæ ipse tenet,
" non consueverunt reparare et
" emendare prædictas quatuor
" particatas walliæ prædictæ a
" tempore que non extat memoria,
" prout idem Thomas per breve
" suum supponit. Et de hoc
" ponunt se super patriam. Et
" Thomas similiter."

The *Venire* was awarded, and there were several adjournments.

At *Nisi prius* the jury found
" quod omnes tenentes prædictas
" quatuor bovatas terræ quas præ-
" dictus Johannes de Heighlynge
" modo tenet in Magna Cotes,
" consueverunt reparare et emen-
" dare prædictas quatuor particatas
" walliæ, cum pilis, clais, et alio
" maeremio, a tempore quo non
" extat memoria, quotienscunque
" aliqui defectus inventi fuerunt
" in eisdem. Et dicunt quod post

No. 47.

A.D. 1342. (47.) § Debt, where the plaintiff counted how that
Debt. the defendant and his wife were enfeoffed in fee tail by
Count on a certain grant in defeas-
ance of waste. the plaintiff's ancestor, and how, after the death of the
wife without issue, the defendant granted by his deed
that he would pay to the plaintiff for every 40s. of
waste twelve marks; and he showed how the defendant
had committed waste, &c., wherefore an action accrued
to him, &c.—*Quære*, if the tenant had only had a term
for life, so that a writ of Waste would have lain, whether
this action would be maintained before the waste was
found specifically by writ [of enquiry] of Waste.—Also
quære, if the tenancy were such, and the waste were
found by a writ [of enquiry] of Waste, and treble damages
awarded, whether he would recover by this writ of Debt
more than single damages for the waste. And it seems
that he would not, for it is on a writ of Waste that the
defendant would be charged with treble damages.

No. 47.

(47).¹ § Dette, où il counta coment le defendant et sa femme furent feffes par launcestre le pleintif en fee taile, et coment, apres la mort sa femme² saunz issu,⁴ le defendant graunta par soun fait a paier al pleintif pur chesqun xls. de wast xij marcz, et moustra coment il avoit fait wast, &c., par quei accion luy accrust, &c.—*Quære* si le tenant nust eu forsque terme de vie issi qe bref de wast ust jeu,⁵ si ceste accion serroit mayntenu avant qe la wast fuit atteynt en sa nature par bref de Wast.—[*Item quære*, si la tenance fuit tiel, et par bref de Wast]⁶ trove le wast, et damages agardes a treble, sil recovereit⁷ par ceste⁸ bref de dette outre sengle damage pur le wast. *Et videtur quod non*, qar en le bref de Wast il fuit charge del treble.

A.D. 1342.

Dette.
Counte sur
un certain
grant par
cause de
defesaunce
de wast.²

" tempus memorie, prout recolere
" possint, usque jam octo annis
" elapsis quod predictæ quatuor
" bovatae terræ devenerunt ad
" manus predicti Johannis, nulli
" defectus contingebant in wallia
" predicta nisi bis, et tunc tenen-
" tes predictarum quatuor bova-
" tarum terræ predictas quatuor
" particatas walliæ predictæ re-
" pararunt et sustentarunt, ut
" predictum est, et predictus Jo-
" hannes postmodum illas non
" reparavit tempore suo, quia non
" contingebat in eadem wallia
" aliquis defectus nisi semel, de
" quo idem Thomas modo se-
" queritur. Quæsi iidem Jura-
" tores ad quæ damna si Curie,
" &c., dicunt quod ad damna viginti
" solidorum. Ideo consideratum
" est quod predictus Thomas de
" Bernardestone recuperet versus
" predictum Johannem de Heigh-
" lyne damna sua predicta. Et præ-
" dictus Johannes in misericordia.
" Et præceptum est Vicecomiti
" quod distringat predictum Jo-

" hannem ad reparandum et
" emendandum predictas quatuor
" particatas walliæ predictæ, &c.,
" pro salvatione terrarum et tene-
" mentorum predicti Thomæ con-
" tra fluxus aquæ predictæ, ut
" predictum est. Postea dictus
" Rex misit hic per breve suum
" clausum Johanni de Stonore
" Justiciario de predictis recorde et
" processu mittendis coram ipso
" Rege in Cancellaria, et mittuntur
" per J. de Aultone, &c."

¹ From T., L., 16,560, 25,184,
and Harl.

² The words after Dette are from
25,184 alone.

³ 25,184, le femme morust, &c.,
instead of la mort sa femme.

⁴ The words saunz issu are
omitted from L., 16,560, and Harl.

⁵ 25,184, ew; the other MSS.,
except T., eu.

⁶ The words between brackets
are not in 16,560.

⁷ 25,184, recoverast.

⁸ ceste is not in Harl.

No. 48.

A.D. 1342.

Quid juris clamat, where the Note of the Fine supposed the tenant to hold for term of his life, and he showed that he had a different estate, to wit, that, if he died within the first twenty years, his assigns or executors might hold the tenements until the twenty years had expired, and that by deed of the cognisor.

(48.) § *Quid juris clamat* was sued against one who was supposed to be tenant, for term of life, of the manor of S. and other lands in S., and of a messuage and other lands in several other villis. And he came and said that he held in S. only the manor of S., and said that he held that and all the rest for term of life, so that if he were to die within twenty years his assigns or executors were to hold it until the end of the twenty years; and he demanded judgment whether on such a note, supposing his tenancy to be only for term of life, he ought to be put to attorn. And he made *profert* of the deed of the cognisor, which purported as above, and also that he was to render for the first ten years £10, which by the same deed were supposed to have been paid, and to pay during the remaining ten years £4, for which satisfaction had been made, as he showed by another deed.—*Thorpe*. He does not deny the tenancy for term of life; judgment. And we pray that he may be adjudged to attorn, since he does not choose to claim any other estate in certain.—*Pole*. Since you do not deny that our tenancy is other than that which the note supposes, judgment, &c.—*Thorpe*. You say that you hold in S. only the manor of S. That may be either because all that which it is supposed that you hold in S. is but the manor of S., or because another holds the rest and you hold the manor alone; wherefore plead with certainty, for one does not know whether this be non-tenure or not.—*Pole*. We shall

No. 48.

(48.)¹ § *Quid juris clamat* suy vers un qe fuit A.D. 1342.
suppose tenant a terme de vie del³ manere de S. et *Quid juris clamat*, ou
altres terres⁴ en S., et un mies et altres terres en la note
plusours altres villes; qe vynt et dit qil tynt en S. supposa le
forsqe le manere de S., et dit qil tynt cel et tut le tenant
remenant a terme de vie, issi qe sil devias^t deinz les xx terme de
aunz les⁵ assignes ou executours le tenissent⁶ tanqe al sa vie, qe
fyne de xx aunz, et demanda jugement si⁷ sur tiele⁸ avoit altre
note, supposant sa tenance soulement a terme de vie, estat,
duist il estre mys dattourner. Et mist avant fait le saver, sil
conisour qe voient *ut supra*, et auxi rendant⁹ les primers xx morust
primers¹⁰ x aunz x¹¹ li., queux¹² par mesme le fait fuit aunz, qe
suppose estre paies, et les autres x aunz paiaunt iiijli.,¹³ ces as-
des queux¹² gre fuit fait, solonc ceo qil moustra par signes ou
altre fait.—*Thorpe*. Il ne dedit pas la tenance a terme execu-
de vie; jugement. Et prioms qil soit agarde dattourner, tours,
del hure qe altre estat en certeyn ne voet clamer.—*Pole*. tanqe a la
Del houre qe vous ne dedites pas nostre tenance estre fin de xx
altre qe la note ne suppose, jugement, &c.—*Thorpe*. aunz, les
Vous dites qe vous tenes en S. forsqe le maner de S. pount
Ceo puit estre ou pur ce qe quant¹⁴ qest suppose qe¹⁵ tener, et
vous tenez en S. [ceo nest forsqe le maner de S.],¹⁶ ou pur ceo par fet
ceo qe le remenant un altre tynt et vous tenez soule- le conisour.²
ment¹⁷ le maner; par quei pledez en certeyn, qar homme
ne sciet¹⁸ si ceo soit noutenure¹⁹ ou nient.—*Pole*. Nous

¹ From T., L., 16,560, 25,184, and Harl.

² The words after *clamat* are from 25,184 alone.

³ 16,560, dun.

⁴ The word *terres* is omitted from 16,560.

⁵ T., les; 16,560, ces; Harl., qe ces.

⁶ Harl., tensent.

⁷ 16,560, et.

⁸ Harl., cele.

⁹ 25,184, pendantz.

¹⁰ primers is omitted from 25,184.

¹¹ 25,184, xl.

¹² 25,184, queles.

¹³ T., mars.

¹⁴ quant is not in 16,560.

¹⁵ The words *qest suppose qe* are omitted from T.

¹⁶ The words between brackets are omitted from 25,184.

¹⁷ Harl., solonk.

¹⁸ Harl., soit.

¹⁹ 16,560, joyntenue.

No. 49.

A.D. 1342. not be put to claim except for what we hold; and the view is not made; wherefore we can not know whether the rest be parcel of the manor or not; and issue cannot be joined between you and us as to whether we be tenant or not; for if we be tenant and disclaim against you who claim the reversion in a court of record, you can enter, &c. And as to all the rest in the other vills, we are not tenant, nor were we so on the day of the note; ready, &c.—*Thorpe*. Tenant on the day of the note; ready, &c.—And the other side said the contrary.—And as to the manor of S., *Thorpe* demanded judgment as above, since he claimed no estate higher than a term for life, and the rest of which he speaks can only be a protestation to save the estate in the term for his executors or assigns; for one has seen that by virtue of a similar note he who had an estate for his life certain, and a term of years for his executors, was put to attorn: and also a writ of Waste would be maintained against him, as against a tenant for term of life.—*HILLARY*. One has seen attornment in the case you speak of by assent of the parties, but not otherwise.—*R. Thorpe*. It would be right in our case that the note should be in accordance with the facts; and if one can not have such a note, still it is fit that the attornment be made on judgment by the Court so that the matter may be entered.—And note that one shall have a note in accordance, &c.

*Quare
impedit*

(49.) § Richard de Wyngefeld brought a *Quare*

No. 49.

serroms pas mys de clamer forsque de ceo qe nous tenoms ; A.D. 1342. et la vieve nest pas fait ; par quei nous ne poms saver si le remenant soit parcelle du maner ou noun ; et issue ne se fra pas entre vous et nous si nous soioms tenant ou noun ; qar si nous soioms tenant et desclamoms vers vous qe clamez reversion en court de record, vous poez entrer, &c. Et quant a tut le remenant [en les altres villes, nous ne sumes pas tenant, ne fumes]¹ jour de la note ; prest, &c.—[*Thorpe*. Tenant jour de la note ; prest, &c.—*Et alii e contra*.]²—Et quant al maner de S., *Thorpe* demanda jugement *ut supra*, del houre qil clama nul estate pluis haut qe terme de vie, et le remenant dount il parle ne puit estre forsque protestacion² de salver lestat del terme pur ses executours [ou assignes ; qar homme ad view qe par tiele note celui qe avoit estat a sa vie en certeyn, et pur ses executours]¹ terme daunz, qil fuit mys dattourner ; et auxi bref de Wast serroit meyntenu devers luy³ com vers tenant a terme de vie.—HILL. Homme ad vieu lattournement en le cas qe vous parles par assent des parties, mes autrement nient.—*R. Thorpe*. Il serroit resoun en nostre cas qe la note fut⁴ accordaunt a la matere ; et si homme ne puit aver tiele note, unquore il covient qe lattournement se face par agard de Court, issi qe la chose soit entre.—*Et nota* qe homme avera⁵ note accordant, &c.⁶

(49.)⁷ § Richard de Wyngefeld porta *Quare impedit* *Quare impedit*

¹ The words between brackets are omitted from 25,184.

² L., prodestacion ; 25,184, proces.

³ The words devers luy are from L. alone.

⁴ T., soit ; 25,184, fuit.

⁵ 25,184, averoit.

⁶ The last sentence is omitted from L., 16,560, and Harl.

⁷ From T., L., 16,560, 25,184,

and Harl., but corrected by the record, *Placito de Banco*, Easter, 16 Edw. III., R^e. 342. It there appears that the action was brought in respect of a presentation to the church of Dynyeton (Dennington?) in the county of Suffolk. The names of the persons are given, but not quite accurately, in the several MSS. of Y. B.

No. 49.

A.D. 1842. *impedit* against William Carbonel and Margaret his wife, and counted that one William de Boville was seised of the advowson, and presented William de Reppes, and afterwards leased the manor of Dennington and the advowson and other lands to William de Reppes for the term of his life, and subsequently by fine granted the reversion to the plaintiff, by reason of which grant William de Reppes attorned, and after the death of Reppes, at which time the church became vacant, the plaintiff entered on his reversion; so it belongs to him to present. —*Rokel*. He has not counted whether the advowson is in gross or appendant; judgment of the count. And in order to have a writ to the Bishop we tell you that it is quite true that William de Boville was seised of the advowson as appendant¹ to the manor of Dennington, and presented, which manor, with its appurtenances, William de Boville gave to his son John and the heirs of his body, &c.; from John it descended to Margaret as daughter, who is the wife of William Carbonel, and thus they are seised of the manor to which the advowson, &c.; and we demand judgment and pray a writ to the Bishop.—*Thorpe*. And we demand judgment, since they have not denied the lease made to William de Reppes, for term of life, by William de Boville, or the grant of the reversion by fine, to which fine William de Boville was party, to whom Margaret is cousin and heir, as is supposed by our declaration; and as to what they have said for plea, viz., that the advowson is appendant, that is not to the purpose for abating the count, unless other matter were to be shewn. And as to what they say further, that is in order to have a writ to the Bishop, as they have themselves shown, and not for plea to which the party would have an answer, but only to tender to the Court; and we demand judgment, and pray a writ to the Bishop.—*Derworthy*. And we

against one who was seised of the manor to which the advowson was appendant, though at the time of the voidance the plaintiff was seised of the manor until ousted by the other. See above, Hilary in the fourth year, *per* Willoughby.

¹ The word used in the roll is "pertinet."

No. 49.

vers William Carbonel et Margarete sa femme, et counta qun William de Boville fuit seisi del avoweson, et presenta William de Reppes, et puis lessa le maner de Dynyeton² et lavoweson et altres terres a William de Reppes a terme de sa vie, et puis par fyne graunta la reversion al pleintif, par quel graunt il attourna, et apres sa mort il entra en sa reversion, a quel temps leglise se voida ; issi appent a luy a presenter.—*Rokel*. Il nad pas counte le quel lavoweson est gros³ ou appendaunt ; jugement du counte.⁴ Et pur aver bref al Evesqe nous dioms qe bien est verite qe William de Boville fuit seisi del avoweson et presenta come appendaunt al maner de Dynyeton,⁵ quel maner William de Boville dona ove les appurtenances a Johan soun fitz et les heirs de soun corps, &c. ; de Johan descendi a Margarete come a fille, la femme⁶ William Carbonel, et issi sount il seisi⁷ del maner a qi lavoweson, &c ; et demandoms jugement, et prioms bref al Evesqe.—*Thorpe*. Et nous jugement, del heure qil nount pas dedit le lees fait a William de Reppes, a terme de vie, par William de Boville, ne la reversion par fyne graunte, a quel fyne⁸ William de Boville fuit partie, a qi Margarete est cosyne et heir, come suppose est par nostre demoustraunce ; et ceo qils ount parle pur plee qe lavoweson est appendaunt nest pas a purpos pur count abatre, si altre⁹ matere¹⁰ ne fuit moustre. Et ceo qils parlent outre est pur bref aver al Evesqe, com ils ount mesmes moustres, et noun pas pur plee a quei partie avereit respons, mes soulement pur servir¹¹ a la Court ; et demandoms jugement, et prioms bref al Evesqe.—*Derworthi*. Et nous jugement, del

A.D. 1342.

devers
[un] qe
fuit seisi
de maner a
quantz
lavowe-
soun ap-
pent, mes
al temps
de la void-
ance le
pleintif
fuit seisi
du maner
tanqe oste
per lautre.
Vide supra
H. iij, per
Wilugby.¹
[Fitz.
Quare
Impedit,
146.]

¹ The words after *impedit* are from 25,184 alone.

² MSS. of Y. B., R.

³ L., unq gros.

⁴ Harl., compt.

⁵ L., D ; the other MSS. of Y. B., R.

⁶ L., fille.

⁷ seisi ut in dominico, servitio, et reversione, &c., in the record.

⁸ fyne is from T. alone.

⁹ L., la.

¹⁰ Harl., nature.

¹¹ L., a pursuer, instead of pur servir.

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A.D. 1343. demand judgment, since you have not denied that the church is appendant to the manor of Dennington, of which manor you have not denied that we are seised, and we pray a writ to the Bishop.—*Pole*. When one is seised of a manor or anything else to which an advowson is appendant, and brings a writ of *Quare impedit*, there is no need, if he will not do it of his own accord, that he should count that the advowson is appendant, nor in any case but where one takes his title to present by reason of seisin of a manor or any thing else to which the advowson is appendant, in which case issue by collateral matter might be taken on the appendancy; and since you have given no other answer to the party but that the advowson is appendant, and whatever you say besides is to the Court, from which the party is discharged, and since, even if the advowson had been appendant to the manor of Dennington while the manor was in the seisin of William de Boville, it would be severed by the lease and the grant of the reversion by William de Boville, &c., judgment.—*Derworthy*. When we pleaded to the count that the advowson was appendant, &c., and not in gross, as was to be understood from your declaration by the Court and by party, and when we went further in order to have a writ to the Bishop, and showed that it belongs to us to present, and by our title traversed a matter which would maintain your title and your action, to that you ought by law to answer.—*HILLARY*. That would be true, if the matter were set forth by way of answer.—And afterwards *Thorpe* said that the lease was made by William de Boville to

No. 49.

houre qe vous navez pas dedit qe leglise nest appen- A.D. 1342.
dant al maner de Dynyeton,¹ de quel maner vous navez
pas dedit qe nous sumes seisi, et prioms bref al Evesqe.
—*Pole*. Quant homme est seisi dun maner ou autre
chose² a qi un avoweson est appendaunt [et porte
Quare impedit, il ne bosoigne pas, sil ne veut³ de gree,
qil counte qe lavoweson est appendaunt],⁴ ne en nul cas
mes la ou homme prent soun⁵ title de presenter par
cause⁶ de la seisine dun maner ou altre chose a qi
lavoweson est appendaunt, en quele cas issue par
matere⁷ de coste purroit estre pris sur lappendaunce;
et [del houre qe altre⁸ respons navez done a partie mes
qe lavoweson est appendaunt, et quant qe vous parlez
outre est a la Court, de quei partie est descharge, et tut
ust ele este appendaunt al]⁹ maner de Dynyeton¹⁰ en la
seisine William de Boville, unquore par le lees et par le
graunt de reversion de William de Boville ele serroit
severe, jugement.—*Derworthi*. Quant nous pledames¹¹
au counte¹² qe lavoweson fuit appendant, &c., et noun
pas gros, com fuit entendu par vostre demoustrance de
la Court et de partie, quant nous alames¹³ outre pur
bref aver al Evesqe, et moustrames qe a nous appent a
presenter, et par nostre title traversames chose qe
meyntendreit vostre title et vostre accion, a ceo vous¹⁴
devez respondre par ley.—*HILL*. Cest verite sil ust
este livre pur respons.—Et puis *Thorpe* dit qe le lees
fuit fait par William de Boville¹⁵ a William de Reppes

¹ MSS. of Y. B., R.² The words ou autre chose are from 16,560 alone.³ 25,184 and Harl, voet; L., volt.⁴ The words between brackets are omitted from 16,560.⁵ L., tiel.⁶ The words par cause are omitted from Harl.⁷ Harl., nature.⁸ 25,184, lautre.⁹ For the words between brackets

there are substituted in L. the word a, and in Harl. the words tout fut le.

¹⁰ MSS. of Y. B., R.¹¹ L., vous pledes, instead of nous pledames.¹² 25,184, compte.¹³ T., alassoms.¹⁴ T., ne.¹⁵ The names are supplied from the record, being inaccurately given in the MSS. of Y. B.

No. 49.

A.D. 1342. William de Reppes after the death of John son of William de Boville, and that William de Reppes continued afterwards, &c. ; and they have not denied that the reversion was granted by fine by William de Boville their ancestor. And after the death of William de Reppes, tenant for term of life, we entered, at which time, while we were seised of the manor, the church became vacant ; and we tell you that we do not admit the appendancy, as above, nor the gift in tail which they have alleged, but we say that the possession which they had was by abatement effected on our possession after the death of our tenant for term of life ; and we demand judgment, and pray a writ to the Bishop.—*Derworthy*. And we demand judgment, since they have

No. 49.

apres la mort Johan le fitz William de Boville, et qe A.D. 1342. William de Reppes continua apres, &c. ; et la reversion graunte par syne par William de Boville lour auncestre nont ilz pas dedit. Et apres la mort William de Reppes, tenant a terme de vie, [nous entrames, a quel temps, tanqe],¹ nous fumes seisi du maner, leglise se voida ; et vous dioms qe nous ne conissons pas lappendaunce, *ut supra*, ne le doun en taille qils ount allegge, mes la possession qils avoient fuit par abatement fait² sur nostre possession apres la mort nostre tenant a terme de vie ; et demandoms jugement, et prioms bref al Evesqe.³—*Derworthi*. Et nous jugement, del houre qil nount pas

¹ The words between brackets are not in 16,560.

² Instead of avoient fuit par abatement fait there are in 25,184 the words ount fait abatu fet.

³ Thorpe's pleading in this passage is represented in the record as follows :—" Ricardus," not admitting the allegations of William Carbonel and his wife as to the gift and the appurtenances of the advowson to the manor, " dicit quod concessio prædicta prædicto Willemo de Reppes de advocacione prædicta una cum manerio prædicto per prædictum Willemum de Boville facta fuit post mortem prædicti Johannis, cui iidem Willelmus Carbonel et Margareta supponunt hujusmodi donum fieri de manerio prædicto. Dicit etiam quod status quem iidem Willelmus Carbonel et Margareta habent in eodem manerio est per disseisinam suam prædicto Ricardo factam post ingressum suum in advocacione una cum manerio prædictis ut in reversione sua post mortem prædicti Willelmi de Reppes per

" ejus mortem, &c., et ex quo iidem Willelmus Carbonel et Margareta expresse cognoverunt seisinam prædicti Willelmi de Boville de advocacione prædicta et quod idem Willelmus de Boville præsentavit ad prædictam ecclesiam in forma prædicta, et non deducunt quin idem Willelmus de Boville advocacionem prædictam una cum manerio, &c., concessit præfato Willemo de Reppes in forma prædicta, et postea per finem prædictum idem Willelmus de Boville, ejus heres prædicta Margareta est, reversionem advocacionis et manerii prædictorum prædicto Ricardo concessit in forma prædicta, per quam concessionem idem Willelmus de Reppes se attornavit, &c., et quin idem Ricardus, post mortem prædicti Willelmi de Reppes, intravit in advocacione et manerio prædictis, prout idem Ricardus in narrando supponit, quo tempore prædicta ecclesia vacavit, petit judicium et breve Episcopo, &c."

No. 49.

A.D. 1342. not denied that we were seised during the life of William de Reppes, the tenant for term of life as they say (though we do not admit the lease), and that we have continued this estate, &c.—*Pole*. He is at traverse with us, inasmuch as he alleges a continuance before the death and after the death of our tenant for term of life, which is tantamount to saying that after the death of William de Reppes we had nothing, and that traverse would make an issue if they would take it by way of traverse; but since they will not according to law traverse us by negative words, judgment, &c.; for according to law the plaintiff should be first answered either by traverse or in some other manner.—*Gayneford*. Each of the parties in a *Quare impedit* is plaintiff, wherefore it is sufficient for the defendant to show his reason why it belongs to him to present.—*HILLARY*. From one point of view each is plaintiff, because either of them may recover against the other; but it is always required that the plaintiff be first answered as to his declaration by traverse, or otherwise by confession and avoidance; and since that which you allege as to continuance in you is by affirmative words, which can not make an issue if you do not take a traverse to them, and that in the negative, it seems that their declaration is not answered according to law.—And afterwards they were at issue whether, after the death of William de Reppes, the tenant for term of life, Richard de Wyngefeld was seised or not of the manor; ready, &c.—And the other side said the contrary.—And so note that the advowson is by the issue admitted to be appendant, &c. And note that in

No. 49.

dedit qe nous fumes seisi, vivant William de Reppes, le A.D. 1342. tenant a terme de vie a ceo qil diount, quel lees nous ne conissons pas, et cele estat avoms continue, &c.—*Pole*. Il est a travers a nous, en taunt come il allegge continuance devant la mort et puis la mort nostre tenant a terme de vie, qe taunt amount qe pus¹ la mort William de Reppes nous navoms riens, et² cele³ travers freit issue sil le⁴ voleient⁵ prendre par voie de travers; mes de puis qil ne voillent⁶ pas par ley nous traverser⁷ par paroule negatif, jugement, &c.; qar par ley le pleintif serroit⁸ primes respondu ou par travers, ou en altre manere.—*Gayn*. Chesqun des parties en *Quare impedit* est actour, par quei⁹ il suffit¹⁰ al defendaunt de moustrer sa resone pur quei a luy appent a presenter.—*HILL*. A une regard¹¹ chesqun est actour pur ceo qe chesqun de eux puit recoverir vers altre; mes touz jours covynt qe le pleintif¹² soit primes respondu a sa demoustraunce [par travers, ou autrement par conisaunce et voidaunce];¹³ et de puis qe ceo qe vous alleggez de continuaunce en vous par paroule affirmatif, qe ne puit faire issue si vous nel preissez¹⁴ a travers deux, et ceo en le negatif, si semble il¹⁵ qe lour moustraunce nest pas respondu par ley.—Et puis furent a issue si, puis la mort William de Reppes, le tenant a terme de vie, Richard de Wyngefeld fuit seisi ou noun¹⁶ del maner; prest, &c.—*Et alii e contra*.—*Et sic nota* qe lavoweson par lissue est conu destre appendaunt, &c. *Et nota* en

¹ T., apres.² 25,184, eu.³ Harl., sel.⁴ le is from L. alone.⁵ T., voillent; L., voleit; Harl., volent.⁶ L., vollent; 16,560, voleit; 25,184, voleynt.⁷ In Harl. the word ne is inserted after traverser.⁸ 16,560 and 25,184, serra.⁹ Harl., qoi.¹⁰ L., sufficit.¹¹ 16,560, record.¹² 25,184, primer pleintif.¹³ The words between brackets are omitted from L.¹⁴ T., pristis.¹⁵ il is omitted from T. and Harl.¹⁶ L., en nom, instead of ou noun.

No. 49.

A.D. 1842. this plea it was stated as law that any one seised of a manor to which an advowson is appendant, if he be disseised of the manor after the church becomes vacant, although he be out of the manor, will recover by *Quare impedit*. And note that this also appears from this plea by the issue taken.

No. 49.

ceo plee qe fuit dit pur ley qe homme seisi dun maner a A.D. 1342.
 qi avoweson soit appendaunt, mesqil soit disseisi de
 maner¹ puis la voidaunce, tut soit il hors du maner, il
 recoversa par *Quare impedit*. *Et nota, hoc patet ex isto*
*placito par lissu pris.*²

¹ The words de maner are from L. alone.

² The last sentence is from 25,184 alone.

The latter part of the report is hardly in accordance with the words of the record, which continues, after the words last cited, as follows:—"Et Willelmus Carbonel et Margareta, non cognoscendo aliquam dimissionem prædicto Willelmo de Reppes factam, seu aliquem finem, &c., dicunt, ut prius, quod prædictus Willelmus de Boville fuit seisitus de manerio prædicto ad quod, &c., et [ad] ecclesiam illam præsentavit in forma prædicta, et manerium illud dedit prædicto Johanni in forma prædicta, qui inde obiit seisitus, post cujus mortem prædicta Margareta intravit in eodem manerio ad quod, &c., ut filia et heres, &c., vivente prædicto Willelmo de Reppes, et iidem Willelmus Carbonel et Margareta seisinam suam de manerio illo, tempore quo prædictus Willelmus de Reppes obiit, per cujus mortem, &c., et hucusque, continuarunt, absque hoc quod prædictus Ricardus, post mortem prædicti Willelmi de Reppes, aliquid habuit in manerio seu advocacione prædictis. Et hoc parati sunt verificare. Et petunt judicium, &c.

"Et Ricardus, ut prius, non

"cognoscendo aliquod donum
 "prædicto Johanni fieri de manerio
 "prædicto seu quod advocatio
 "prædicta ad manerium prædictum
 "pertinet, dicit quod ipse,
 "post mortem prædicti Willelmi
 "de Reppes, per quendam Willel-
 "mum attornatum suum, in ma-
 "nerio et advocacione prædictis
 "intravit, ut in reversione sua,
 "virtute finis et attornamenti
 "prædictorum, et sic de eisdem
 "seisitus fuit quousque ipse per
 "prædictos Willelmum Carbonel
 "et Margaretam extitit disseisitus.
 "Et hoc petit quod inquiratur
 "per patriam."

Issue was joined thereon. The *Venire* was awarded. The verdict at *Nisi prius* was "quod prædictus Ricardus de Wyngefeld, post mortem prædicti Willelmi de Reppes, per quendam Willelmum attornatum suum, in manerio et advocacione prædictis intravit, ut in reversionem suam, virtute finis et attornamenti prædictorum, et sic de eisdem seisitus fuit quousque ipse per prædictos Willelmum Carbonel et Margaretam extitit disseisitus. Quæsito a præfatis juratoribus quantum prædicta ecclesia valet per annum ad verum valorem, dicunt quod quadraginta libræ. Dicunt etiam iidem juratores quod tempus semestre non elaboratur. Ideo consideratum est quod prædictus Ricardus recuperet

Nos. 50, 51.

A.D. 1342.

Waste.

Note.

Process
against
twelve
[jurors]
who de-
parted in
contempt
of the
Court
without
giving
their ver-
dict.

(50.) § Note that Henry Gysors and his wife brought a writ of Waste. And at the Grand Distress a writ of Enquiry of Waste was sent to the Sheriff, and he returned that the twelve [jurors] were charged before him concerning the waste, and departed in contempt of the Court without giving a verdict; whereupon *Rokel* prayed a remedy.—HILLARY. For the party an *Alias* writ must be sued; and, if you please, sue a writ against the twelve jurors to answer the King and the party and to have them attached by their bodies.—And he did so, &c.

Voucher.
Note the
process

(51.) § Note that Hugh de Audeley, Earl of Gloucester, and M. his wife were vouched, and had

Nos. 50, 51.

(50.)¹ § *Nota* qe Henri³ Gysors et sa femme porterent bref de Wast. Et a la Graunt Destresse maunde fuit a Vicounte denquere, qe retourna qe les xij. furent charges devant luy de wast, et departirent en despit de la Court sanz rendre verdit;⁴ sur quei *Rokel* pria remedie.—HILL. Pur la partie il covient suivre *Siout alias*; et si vous voilles, sues bref vers les xij. a respondre au Roi et la partie et qils soient attaches par lour corps.—*Et ita fecit, &c.*⁵

A.D. 1342.

Waste.

Nota.

Proces vers

xij qe de-

partirent

en despit

de la Court

sanz

rendre

lour ver-

dit.²

[Fitz.

Attache-

ment, 6.]

Vowcher.

Nota pro-

ces ou le

(51.)⁶ § *Nota* qe Hugh Daudele, Counte de Gloucestre, et M. sa femme furent vouches et entres⁷ en garrantie,

"præsentationem suam ad eccle-
siam prædictam, et damna sua
"viginti librarum ad valorem
"ecclesie prædictæ de dimidio
"anno. Et habeat breve Epis-
"copo, loci Diocesano, quod, non
"obstante reclamacione prædicti
"Willelmi Carbonel et Margare-
"tæ, ad præsentationem prædicti
"Ricardi ad prædictam ecclesiam
"idoneam personam admittat,
"&c. Et iidem Willelmus et
"Margareta in misericordia, &c.
"Et prædictus Ricardus gratis
"remittit eis damna prædicta,
"&c."

¹ From T., L., 16,560, 25,184, and Harl., but corrected by the record, *Placita de Banco*, Easter, 16 Edw. III. R^o. 378. It there appears that the action was brought by Henry Gysors and Joan his wife against William son of John de Groshurst (tenant by the curtesy), in respect of waste committed in houses, lands, woods, and garden in Hope, Orlestone, and Warehorne (Kent).

² The words after Waste are from 25,184 alone. There is also

a different side note in L., but it has been partly cut away in binding.

³ All the MSS. of Y. B. except Harl., T.; Harl., Hugh.

⁴ According to the record "Vice-comes nihil inde fecit, sed mandavit quod in propria persona, &c., accessit ad prædicta tementa, et ibidem coram se venire fecit xij, scilicet [the names of the jurors] qui, eorum præstito sacramento coram se de veritate dicenda de vasto prædicto, absque aliquo veredicto inde reddendo, a præfato loco, sine licentia inde obtenta, contemptibilibiter inde recesserunt, &c."

⁵ According to the record there was an *Alias* writ of Enquiry of Waste, ending "et etiam quod attachiet prædictos juratores, &c., quod sint hic ad præfatum terminum ad respondendum tam Regi quam prædictis Henrico et Johanne de contemptu et transgressionibus prædictis, &c."

⁶ From T., L., 16,560, 25,184, and Harl.

⁷ L., *entrentant*.

No. 52.

A.D. 1342. entered into warranty and had pleaded with the
 where the demandant, and, pending the plea, M. died.—*Pole* said,
 demandant admitted that the vouchee was dead. for the demandant, because he did not wish to be
 delayed, that M., tenant by her warranty, had died
 since the last day, and he prayed a resummons against
 the tenant.—*HILLARY*. We are not apprised of this
 either by Sheriff's return or by record.—*Pole*. The
 demandant admits it, and it is not right that he should
 be delayed.—*HILLARY*. You shall only have the *Petit*
Cape by reason of her default.

Deceit. (52.) § Nicholas Inkepenne sued a writ of Deceit
 Process. against John Micheldore,¹ to show cause why he had sued
Audita execution on a Statute Merchant contrary to his own
Querela deed, and also against John Blount, to whom Micheldore
 against two persons in a case in which one was party to the de-
 ceit, and the other was not, but was named also as having
 the estate of the first. And [note] that after deceit had been found
 as to the one, a *Scire facias* was awarded against the
 23. (52.) § Nicholas Inkepenne sued a writ of Deceit
 against John Micheldore,¹ to show cause why he had sued
 execution on a Statute Merchant contrary to his own
 deed, and also against John Blount, to whom Micheldore
 had leased his estate. And J. Blount came at first, and
 said nothing because J. Micheldore did not come, and he
 had a day by *Idem dies*; and subsequently, on his
 default, at the Grand Distress, and until by an inquest,
 on the mise of J. Micheldore, the deceit had been found,
Thorpe prayed judgment.—*Gayneford*. You shall not
 have judgment until John Blount comes, against whom
 as party you have taken suit, and who will, perhaps, by
 a release oust you from action; and judgment now in
 his absence would be a disseisin.—*Thorpe*. Heretofore
 when he was in Court he said nothing, and if he had
 anything to rebut the party, he ought to have alleged it
 then.—*Pole*. No; he ought not, for he could not say
 anything without J. Micheldore, who was the principal.

¹ The John Michedore, Milche- MSS. is probably John de (or of)
 dore, Micheldore, &c., of the French Micheldever.

No. 52.

et avoint plede ove le demandant, [et pendaunt le plee M. morust.—*Pole* dit, pur le demandaunt, pur ceo qil ne voleit pas estre delaie, qe M. tenant]² par sa garrantie fuit mort puis le drein³ jour, et pria resomons⁴ vers le tenant.—*HILL*. Nous ne sumes pas appris de ceo par retorn de Vicounte ne par record.—*Pole*. Le demandaunt le conust, et il nest pas resoun qil soit delaie.—*HILL*. Vous naverez forsque petit *Cape* par sa defaute.

(52.)⁵ § Nicholas Inkepenne suist bref de Deceite vers Johan Michedore,⁷ pur quei il avoit suy execucion sur Estatut Marchaunt countre soun fait demene, et auxi vers Johan Blount, a qi Michedure avoit lesse soun estat. Et J. Blont vynt primes, et ne dit rien pur ceo qe J. Michedure ne vynt pas, et avoit jour par *Idem dies*, et puis par sa defaute par Graunt Destresse tanqe apres qe par enqueste a⁸ la mise J. Milchedure la desceite fuit atteint; ⁹ sour¹⁰ quei *Thorpe* pria jugement.—*Gaym*. Jugement naverez vous tanqe Johan Blount viegne,¹¹ vers qi vous avez pris¹² suite come partie, et le quel par relees¹³ vous oustra par cas daccion; et lagard ore en sabsence serroit une disseisine.—*Thorpe*.¹⁴ Devant ces hures quant il fuit en Court il ne dist¹⁵ rien, et adonques sil eust eu rien daver rebote partie, il le¹⁶ duist, aver allegge.—*Pole*. Nanyl, noun duist, qar il ne pout rien saunz J. Michedure, qe fuit principal.¹⁷—*Thorpe*.

A.D. 1342.
demandant
conisa qe
le vouch
fuit mort,
&c.¹

Deceite.⁶
Proces.
Audita
Querela
vers ij par
la ou lun
fuit partie
a la dei-
sette, et
lautre ne
mye, mes
nome auxi
come cely
qe avoit
lestat
lautre. Et
apres la
desceite
attainct
en lun qe
le *Scire*
facias fut
agarde
vers lautre,

¹ The words after Voucher are from 25,184 alone, from which MS. the word Voucher is omitted.

² The words between brackets are omitted from 25,184.

³ The words puis le drein are omitted from 16,560.

⁴ Harl., recoverer.

⁵ From T., L., 16,560, 25,184, and Harl.

⁶ The word Deceite is omitted from 25,184, but the subsequent words of the marginal note are from that MS. alone.

⁷ Harl., Micheld. de C.

⁸ The words enqueste a are omitted from Harl.

⁹ 25,184, trove.

¹⁰ T., par.

¹¹ 25,184 and Harl., veigne.

¹² T., porte.

¹³ T., le relees.

¹⁴ *Thorpe* is not in Harl.

¹⁵ Harl., dedit.

¹⁶ T., la.

¹⁷ The words qe fuit principal are omitted from Harl.

No. 52.

A.D. 1542.
other, and
writs are
still pend-
ing against
both.

—*Thorpe*. You say what you wish ; he could ; and therefore he has lost his answer ; and I well know that the natural process would have been to have awarded a *Venire facias* against Micheldore alone, and after the deceit found to have granted a garnishment against the ter-tenant.—*HILLARY*. You brought your warrant from the Chancery, and that was against both.—*Thorpe*. We pray then that he may be distrained to hear his judgment on the deceit found.—*HILLARY*. By such a writ you will take away his answer from him.—*Thorpe*. That is right.—*HILLARY*. By your suit it is supposed that part of the debt is in arrear, which you are ready to pay, &c. Who shall have the money ? Not J. Micheldore, who has divested himself, and in whom the deceit has been found.—*Thorpe*. John Blount shall have it, if he comes when he shall have a day to hear his judgment ; and if not, he has lost it ; and it would be strange if, after the deceit found, he should be always in possession of the land and should only lose the issues ; and he has caused a manor worth £20 to be extended at 3s. 3d.—*HILLARY*. We will do what we can.—And they were adjourned.—Afterwards, in Trinity term next following, *Thorpe* recited as above, and prayed judgment on the deceit found, and a *Scire facias* against the ter-tenant, or otherwise a distress to hear his judgment.—*HILLARY*. Then you will waive the suit which you have yourself taken and commenced ; and if your suit be discontinued what judgment can the Court afterwards give ?—And

No. 52.

Vous dites talent, si pout; par quei il ad¹ perdu
 respons, et jeo sai bien qe naturel proces ust este² daver
 agarde *Venire facias* soulement vers J. Michedure, et
 apres la desceite atteint³ daver graunte garnisement⁴
 vers terre tenant.—HILL. Vous portastes vostre gar-
 rant de la Chauncellerie, qe fuit vers touz deux.—*Thorpe*.
 Nous prioms donques qil soit destreint doier soun
 jugement sur⁵ la deceite trove.—HILL. Par tiel bref
 luy toudres respons.—*Thorpe*. Cest resoun.—HILL.
 Par vostre suite est suppose qe partie de la dette⁶ est
 arrere, quele vous estes prest a rendre,⁷ &c. Qi avera
 les deners? J. Milchedore nynt, qe sad demys, et en qi
 la deceite est trove.—*Thorpe*. Johan Blount les avera
 sil viegne⁸ quant il avera jour doier soun jugement; et
 si noun, il les ad perdu; et il serroit merveille apres la
 deceite trove sil⁹ serroit¹⁰ touz jours einz en la terre et
 ne perdrait forsque issues; et ad fait estendre¹¹ une
 maner qe vaut xx livres a iij^s. iij^d.—HILL. Nous
 ferroms ceo qe nous poms.¹²—*Et adjornantur*.¹³—*Postea*,¹⁴
termino Trinitatis proximo sequente, *Thorpe* rehercea
ut supra, et pria jugement sur la desceite atteinte, et
Scire facias vers le terre tenant, ou autrement destresse
 doier soun jugement.—HILL. Donques weyverez la suyte
 qe vous mesme avez pris et comence; et si vostre suite
 soit discontinue, quel agard purra la Court apres faire?

A.D. 1342.
 &c., et
 uncore
 pendent
 devers lun
 et lautre
 br[ets?]
 [Fitz.
Disceit,
 35.]

¹ T., vous avez, instead of il ad.

² Harl., serroit, instead of ust este.

³ Harl., trove; the word is omitted from L.

⁴ 16,560, ravissement.

⁵ Harl., de.

⁶ L., deceite.

⁷ 16,560, respondre.

⁸ T., vynt; 25,184 and Harl.,
 veigne.

⁹ 16,560, qils; 25,184 and Harl.,
 qil.

¹⁰ 16,560, serroit.

¹¹ 16,560, entendre.

¹² T., purroms. In 16,560 and
 Harl. the report ends here. In
 Harl. there are the words *Et sic*
finitur, meaning apparently that
 the reports of Easter Term end.

¹³ L., *Et sic fuit* continue, with
 which words the report ends.

¹⁴ *Postea* is not in 25,184.

No. 52.

A.D. 1342. afterwards, in accordance with the opinion of the whole of the Court, a *Scire facias* issued against John Blount, returnable in Easter term in the seventeenth year.

No. 52.

Et puis, par avis de tote la Court, *Scire facias* issit A.D. 1342.
vers Johan Blount, retournable *Termino Pasche*,
anno xvij.¹

¹ In L., 16,560, and Harl. there appears, in this term, another case, in which it is represented that Roger Sifre waste (the name being spelt in various ways) sued a writ of Deceit against Ralph de Wedone. Upon comparison, however, it has been found that the matter is in-

cluded, and appears in a better form in No. 15 of Easter Term, 15 Edw. III. (at p. 51) "*Postea Termino Pasche Thorpe priu, pur Roger, Nisi prius, &c.*" See also p. 188 of the present volume, Note 2.

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APPENDIX.

APPENDIX A.

RECORD OF THE CASE, EASTER, 16 EDWARD III., No. 15.

(Placita de Banco, R^o. 132.)

Idem Abbas [de Fontibus] summonitus fuit ad respondendum Ricardo, Priori de Wartre, de placito quod teneat ei conventionem factam inter Johannem, quondam Priorem de Wartre, prædecessorem prædicti nunc Prioris, et Adam, quondam Abbatem de Fontibus, prædecessorem prædicti nunc Abbatis, de eo quod prædictus Adam, quondam Abbas, concessit pro se et successoribus suis quod prædictus Johannes, quondam Prior, et successores sui haberent octavam partem soli et vasti ipsius Adæ, quondam Abbatis, et successorum suorum in Queldrike appruandorum, &c. Et unde idem Prior, per attornatum suum, dicit quod cum prædictus Johannes, quondam Prior, &c., per nomen Prioris de Wartre, die Jovis proxima ante Festum Sancti Dunstani, Episcopi, anno regni domini Edwardi, quondam Regis, avi domini Regis, nunc decimo nono, apud Eboracum, coram Roberto de Hertforde et sociis suis tunc Justiciariis ejusdem Regis avi ad assisas in Comitatu Eboraci capiendas assignatis, tulisset quandam assisam novæ disseisinæ versus prædictum Adam Abbatem prædecessorem, &c., per nomen Abbatis de Fontibus, et alios in brevi originali contentos, et questus fuit se disseiseri de octava parte appruamenti in solo vasti, et etiam de sextadecima quercu in bosco de Queldrike, &c., ad quem diem ibidem convenit inter eosdem Adam Abbatem, &c., per nomen Abbatis de Fontibus, et Johannem Priorem, &c., per nomen Prioris de Wartre, &c., ita quod idem Abbas concessit pro se et successoribus suis et pro ecclesia sua de Fontibus quod prædictus Prior de Wartre et successores sui ex tunc haberent octavam partem soli et vasti appruati et appruandi in prædicta villa de Queldrike, et rationabilia estoveria sibi et hominibus suis in bosco de Queldrike per visum forestarii ipsius Abbatis, et si forestarius ipsius Abbatis aliquo tempore malitiose cum necesse fuerit de estoveriis capiendis se absentaverit, bene liceret præfato Priori et hominibus suis estoveria sua ea vice capere, et similiter quod haberent et caperent sextam decimam quercum cum Abbas

de Fontibus quindecim quercus acceperit ad faciendum pro voluntate prædicti Prioris et successorum suorum, quo tempore idem Abbas seiscitus fuit de quinque millibus acrarum soli et vasti in prædicta villa de Quedrike tunc non appruati, &c. Et dicit quod idem Abbas postmodum se appruavit in bosco prædicto de quadraginta acris soli, et inde fecit terram arabilem, et etiam in vasto ibidem de quadraginta acris, et inde fecit pratum, tempore prædicti Edwardi Regis avi et tempore prædicti Johannis, Prioris, &c. Et postea quidam Robertus, Abbas, &c., se appruavit ibidem de quadraginta acris in eodem bosco, et inde fecit terram arabilem, et de quadraginta acris in vasto ibidem, et inde fecit pratum, tempore prædicti Regis avi et tempore prædicti Johannis, Prioris, &c. Et postea quidam Hugo, Abbas, &c., appruavit se de quadraginta acris in eodem bosco, et inde fecit terram arabilem, et de quadraginta acris in vasto ibidem, et inde fecit pratum, tempore prædictorum Regis avi et Johannis, Prioris, &c. Et postmodum quidam Willelmus, Abbas, appruavit se in prædicto bosco de triginta acris soli, et inde fecit terram arabilem, et de viginti acris soli in vasto ibidem, et inde fecit pratum, tempore prædictorum Regis avi et Johannis, Prioris, &c. Et postmodum quidam Walterus, Abbas, &c., appruavit se in bosco prædicto de decem acris, et inde fecit terram arabilem, et in vasto ibidem de decem acris, et inde fecit pratum, tempore domini Edwardi Regis, patris domini Regis nunc, et tempore prædicti Ricardi, nunc Prioris, &c. Et post ipsum prædictus Robertus, Abbas nunc, appruavit se in bosco prædicto de decem acris, et inde fecit terram arabilem, et in vasto ibidem de decem acris, et inde fecit pratum, tempore domini Regis nunc et tempore prædicti Ricardi, nunc Prioris, &c. Et dicit quod prædictus Johannes, Prior, &c., prædecessor, &c., requisivit separatim quemlibet prædictorum Abbatum prædecessorum, &c., post prædicta appruamenta per eos separatim facta, quod ipsi conventionem prædictam ei tenerent, et similiter ipse Ricardus nunc Prior, &c., præfatum Walterum Abbatem et similiter prædictum Robertum nunc Abbatem sæpius requisivit quod ipsi tenerent ei prædictam conventionem de omnibus appruamentis prædictis, iidem Abbates prædecessores, &c., conventionem illam tenere noluerunt, sed prædictus Abbas nunc hucusque eam tenere contradixit et adhuc contradicit, unde dicit quod deterioratus est et damnum habet ad valentiam centum librarum. Et inde producit sectam, &c. Et profert hic literas domini Regis patentes quæ testantur quod idem dominus Rex tenorem recordi et processus prædictorum exemplificavit, &c.

Et Abbas, per attornatum suum, venit et defendit vim et injuriam quando, &c. Et non cognoscendo aliquod appruamentum esse factum per ipsum vel prædecessores suos, sicut prædie-

tus Prior supponit, dicit quod per prædictam exemplificationem, quam prædictus Prior hic protulit, supponitur prædictum Johannem Priorem, &c., prædecessorem, &c., arramiasse prædictam assisam versus prædictum Adam Abbatem de octava parte appruamenti in solo vasti, &c., de qua quidem assisa idem Johannes Prior se retraxit, per quod ipse Johannes Prior et plegii sui de proseguendo fuerunt in misericordia, et prædictus Adam Abbas tunc inde sine die; et ita breve illud et placitum super eodem brevi omnino terminatum, et post iudicium inde redditum potestas iudicis in illa parte omnino extincta. Et prædicta conventio quæ in rotulis Justiciariorum prædictorum postea irrotulata fuit est de octava parte soli et vasti appruati et appruandi in prædicta villa et de rationabilibus estoveriis, &c., et sic omnino de alia re quam prædictus Prior tunc questus fuit se disseisiri in assisa prædicta, ut patet per exemplificationem prædictam, quæ quidem verba sic irrotulata non possunt dici nisi nuda verba et vacua et sine aliquo waranto et quæ non possunt successores, &c., onerare, nec prædictus Prior aliquod aliud factum Curie hic ostendit quod Abbatem et Conventum et successores suos et ecclesiam suam de prædicta conventionem onerare potest. Unde petit iudicium si idem Prior per prædictam exemplificationem quam Curie hic ostendit in hac parte actionem prædictam possit versus eum qui est successor, &c., manutenere, &c. Dies datus est eis hic in Crastino Sancti Johannis Baptistæ, prece utriusque partis, in statu quo nunc, salvis partibus.

Ad quem diem prædictus Abbas fecit se inde essonari de malo veniendi versus prædictum Priorem de prædicto placito. Et habuit inde diem per essoniatorem suum hic ad hunc diem scilicet in Octabis Sancti Martini proxime sequentibus, &c. Et modo venit tam prædictus Prior in propria persona, &c., quam prædictus Abbas per prædictum attornatum suum. Et idem Prior dicit quod ex quo prædicta conventio coram Justiciariis prædictis qui de recordo fuerunt acceptata fuit, et rotulis eorundem Justiciariorum irrotulata, et postmodum per dominum Regem nunc exemplificata, quæ quidem conventio est parcella recordi assisæ novæ disseisinæ quam prædictus Johannes quondam Prior, &c., tulit versus prædictum Adam quondam Abbatem, et quæ conventio et etiam assisa prædicta sunt totum unum recordum stans in suo robore et effectu non revocata nec annullata, et prædictus Abbas nunc non dedit prædicta appruamenta esse facta, nec conventionem prædictam per prædecessorem ipsius Abbatis nunc factam per eundem nunc Abbatem infringi, et quæ conventio per ipsum Adam Abbatem tantum et non per Conventum ipsius Abbatis tunc fieri potuit, maxime cum Conventus, &c., non potuit esse pars in huiusmodi recordo, &c., nec deberet esse tunc temporis nec

adhuc his diebus, unde petit iudicium et damna sibi adjudicari, &c.

After several adjournments, judgment was given :—

Quia prædicta conventio coram præfatis Justiciariis avi, &c., irrotulata adtunc pro recordo coram eis acceptata fuit, et postmodum per dominum Regem exemplificata, videtur Curiae hic quod adhuc est de recordo. Et prædictus Abbas nihil dicit ad exonerandum ipsum de conventionem prædicta nec dedit prædicta appruamenta esse facta nec dictam conventionem per prædictum Abbatem infringi in forma qua prædictus Prior versus eum narravit, per quod consideratum est quod prædictus Prior recuperet versus eum damna sua prædicta, et idem Abbas in misericordia, &c.

Et super hoc prædictus Prior elegit sibi liberari omnia bona et catalla prædicti Abbatis præter boves, &c., et similiter medietatem terrarum et tenementorum, &c., tenenda, &c., juxta formam Statuti, &c., quousque prædictos denarios inde levaverit. Et qualiter, &c., Vicecomes scire faciat hic a die Paschæ in tres septimanas, &c. Ad quem diem Vicecomes non misit breve. Ideo sicut prius habeat inde breve per Statutum, &c. Et qualiter, &c., Vicecomes scire faciat hic in Crastino Sancti Johannis Baptistæ, &c. Postea, scilicet decimo octavo die Maii anno domini Regis nunc tricesimo sexto, dominus Rex mandavit breve suum clausum Roberto de Thorpe, Capitali Justiciario de Banco, de recordum et processum coram ipso Rege cum omnibus, &c., in Crastino Ascensionis tunc proxime sequente ubicunque, &c., mittendo. Et ei mittitur per Ricardum de Treton.

APPENDIX B.

RECORD OF THE CASE, EASTER, 16 EDWARD III., No. 19.

(*Placita de Banco*, Easter, 16 Edward III., R^o. 123.)

JURATA viginti et quatuor militum de visneto de Elvyngtone venit recognitura si juratores, per quos quædam inquisitio nuper summonita fuit coram dilectis et fidelibus Regis Willelmo de Herle et sociis suis tunc Justiciariis de Banco hic per breve suum, et postmodum capta apud Eboracum coram dilecto et

fideli Regis Ricardo de Aldeburghe tunc uno Justiciariorum Regis de Banco prædicto per breve Regis *Nisi prius*, inter Henricum de Morby et Aliciam uxorem ejus petentes, et Evam, uxorem Radulfi Bradeghe, tenentem, de duobus mesuagiis, una bovata et octo acris terræ, et tribus acris prati cum pertinentiis in Elvyngtone, quæ quidem Eva, per defaultam quam prædictus Radulfus, vir suus, coram prædictis nuper Justiciariis versus præfatos Henricum et Aliciam fecit, admissa fuit ad jus suum in hac parte defendendum juxta formam Statuti in hujusmodi casu provisi, falsum fecerunt sacramentum, sicut iidem Radulfus et Eva Regi graviter conquerendo monstraverunt, necne, quæ quidem tenementa prædicti Henricus et Alicia modo tenent, &c.

Et modo veniunt tam prædicti Radulfus et Eva quam prædicti Henricus et Alicia, &c. Et Willelmus Paumes, Thomas de Northfolke, Johannes de Naburne, Robertus Margrayve, Robertus Tyntelone, Robertus Taillour, Willelmus Amy, Willelmus Darelle, et Petrus Chaunce, novem juratores prædictæ primæ inquisitionis, non veniunt. Et modo districti sunt per magnam districtionem, &c. Ideo prædicta jurata viginti et quatuor, &c., non remansit capienda per eorum absentiam, &c. Et de Nicholao de Northfolke, Henrico filio Philippi, et Simone de Neutone, tribus juratoribus ejusdem primæ inquisitionis, mandavit Vicecomes quod mortui sunt. Ideo, &c. Et Henricus et Alicia petunt auditum recordi de quo in prædicto brevi de jurata viginti et quatuor fit mentio, &c. Et eis legitur in hæc verba:—

Placita apud Westmonasterium coram W. de Herle et sociis suis Justiciariis domini Regis de Banco a die Sanctæ Trinitatis in xv dies anno regni Regis Edwardi tertii a Conquestu quinto. Ro. cix. Ebor. Henricus de Morby et Alicia uxor ejus, per Johannem de Flete attornatum suum, obtulerunt se iiij^{to} die versus Radulfum Bradeghe de placito duorum mesuagiorum, unius bovatae et octo acrarum terræ, et trium acrarum prati, cum pertinentiis, in Elvyngtone, quæ clamant ut jus ipsius Aliciæ, &c., versus eum et Evam uxorem ejus, &c. Et ipse non venit. Et tam ipse quam prædicta Eva alias fecerunt defaultam hic, scilicet a die Sancti Hilarii in xv dies proxime præterito, postquam comparuerunt hic in Curia et posuerunt se inde in juratam patriæ, &c. Ita quod tunc præceptum fuit Vicecomiti quod caperet in manum domini Regis prædicta tenementa, &c., et quod summoneret eos quod essent hic ad hunc diem, scilicet a die Sanctæ Trinitatis in xv dies audituri inde judicium suum, &c. Et Vicecomes modo mandavit quod cepit in manum domini Regis prædicta tenementa et quod summonuit eos, &c. Et super hoc venit prædicta Eva, et dicit quod prædicta tenementa sunt jus suum. Et petit quod per defaultam prædicti Radulfi, viri sui, non amittat jus suum, sed quod ad defensionem juris sui in hæc

parte admittatur, &c. Et admittitur, &c. Et prædicti Henricus et Alicia petunt versus eam prædicta tenementa, &c., quæ clamant tenere eidem Aliciæ et heredibus de corpore suo et corpore Petri de Morers, quondam viri sui, exeuntibus, ex dimissione Willelmi de Rypone, et in quæ iidem Radulfus et Eva non habent ingressum nisi per prædictum quondam virum ipsius Aliciæ, qui illa eis dimisit, cui ipse in vita sua contradicere non potuit, &c. Et unde iidem Henricus et Alicia dicunt quod eadem Alicia fuit seisita de prædictis tenementis in forma prædicta, tempore pacis, tempore domini Edwardi Regis patris domini Regis nunc, capiendo inde expletia ad valentiam, &c. et in quæ, &c., et inde producit sectam, &c.

Et Eva dicit quod prædicti Henricus et Alicia nihil juris clamare possunt in prædictis tenementis ratione supradicta, &c. Dicit enim quod tempore quo prædictus Petrus dimisit prædicta tenementa prædictis Radulfo et Evæ, &c., prædicta Alicia nihil habuit in eisdem nisi ut uxor prædicti Petri de Morers. Et de hoc ponit se super patriam. Et prædicti Henricus et Alicia similiter. Ideo præceptum est Vicecomiti quod venire faciat hic in Crastino Sancti Martini xij, &c., per quos, &c., et qui nec, &c., ad recognoscendum, &c. Quia tam, &c. Et super hoc prædicta Eva ponit loco suo Thomam de Milforde, &c. Postea, continuato inde processu hic usque ad hunc diem, scilicet a die Sancti Michaelis in xv dies anno Regis nunc sexto, per juratam positam in respectum nisi R. de Aldeburghe die Mercurii proximo post festum Sancti Jacobi Apostoli apud Eboracum prius venisset, et modo veniunt partes prædictæ per attornatos suos, et Ricardus de Aldeburghe, coram quo prædicta jurata capta fuit in patria, misit hic veredictum patriæ in hæc verba:—Postea die et loco infra contentis coram R. de Aldeburghe, associato sibi Ada de Hoptone, veniunt tam prædicti Henricus et Alicia per attornatos suos quam prædicta Eva in propria persona sua. Et similiter juratores veniunt. De consensu partium electi dicunt super sacramentum suum quod, tempore quo prædictus Petrus dimisit prædicta tenementa prædicto Radulfo et Evæ, prædicta Alicia fuit conjunctim feoffata cum prædicto Petro de eisdem tenementis. Ideo consideratum est quod prædicti Henricus et Alicia recuperent inde seisinam suam versus eam. Et prædicti Radulfus et Eva in misericordia, &c.

Et prædicti Radulfus et Eva dicunt quod prædicti juratores prædictæ primæ inquisitionis falsum fecerunt sacramentum in hoc quod dixerunt quod, tempore quo prædictus Petrus dimisit prædicta tenementa prædictis Radulfo et Evæ, prædicta Alicia fuit conjunctim feoffata cum prædicto Petro de eisdem tenementis, quia dicunt quod, tempore ejusdem dimissionis eorundem tenementorum, prædicta Alicia nihil habuit in eisdem tenementis

nisi ut uxor prædicti Petri. Et hoc parati sunt verificare per prædictam Juratam viginti et quatuor, &c.

Et Henricus et Alicia dicunt quod ipsi non debent præfatis Radulfo et Evæ ad hoc breve de Jurata viginti et quatuor, &c., respondere, &c., quia dicunt quod ipsi non tenent tenementa prædicta nec tenuerunt die impetrationis brevis sui. Et hoc parati sunt verificare, &c. Unde petunt judicium de brevi, &c.

Et Radulfus et Eva dicunt quod die impetrationis brevis sui, scilicet tertio decimo die Novembris anno regni domini Regis nunc quintodecimo, prædicti Henricus et Alicia tenuerunt prædicta tenementa prout ipsi superius per breve suum supponunt. Et hoc petunt quod inquiratur per Juratam, &c. Et Henricus et Alicia similiter. Ideo capiatur prædicta Jurata, &c. Sed ponitur in respectum hio usque a die Sanctæ Trinitatis in xv dies pro defectu viginti et quatuor, &c., et similiter prædictorum novem juratorum prædictæ primæ inquisitionis, quia nullus venit. Ideo Vicecomes habeat corpora viginti et quatuor, &c., et similiter prædictorum novem prædictæ primæ inquisitionis, &c. Et apponantur xij tales, &c. Et super hoc prædicti Henricus et Alicia ponunt loco suo Thomam de Grantham vel Johannem de Ponte Fracto, &c. The record ends here.

APPENDIX C.

RECORD (SOMEWHAT ABRIDGED) OF THE PLEADINGS ON A WRIT OF SCIRE FACIAS TO HAVE EXECUTION OF A FINE.

(*Placita de Banco*, EASTER, 16 EDWARD III., R^o 328. See No. 31 OF THAT TERM.)

PRECEPTUM fuit Vicecomiti quod, cum quidam finis levasset in Sussex. Curia domini Edwardi nuper Regis Angliæ, avi domini Regis nunc, hic a die Paschæ in xv dies anno regni sui quartodecimo, coram Thoma de Weyland et sociis suis tunc Justiciariis ejusdem avi sui de Banco, inter Willelmum de Breuse querentem et Henricum de Wyteweye deforciantem, de maneriis de Wassyngtone, Seggewyke, et Fyndone, cum pertinentiis, et advocacione ecclesiæ ejusdem manerii de Fyndone, exceptis duabus acris terræ cum pertinentiis in Wassyngtone unde placitum conventionis summonitum fuit inter eos in eadem Curia, scilicet quod prædictus Willelmus recognovisset prædicta maneria et advocacionem prædictam cum pertinentiis esse jus ipsius Henrici, et

pro illa recognitione, fine, et concordia idem Henricus concessisset prædicto Willelmo prædicta maneria et advocacionem prædictam cum pertinentiis habenda et tenenda eidem Willelmo de capitalibus dominis feodi illius per servitia quæ ad illa maneria et advocacionem prædictam pertinent tota vita ipsius Willelmi [with successive remainders to Richard son of William in tail, to Peter brother of Richard in tail, to William the younger (brother of Peter) in tail, and to the right heirs of William de Breuse, the tenements in each case to be held of the chief lords of the fee by the services appertaining to the manors and advowson], ac jam ex insinuatione Thomæ filii et heredis prædicti Petri accepit dominus Rex quod prædicti Willelmus et Petrus jam obierunt, et quod prædictus Ricardus obiit sine herede de corpore suo procreato, et quod quidam Johannes filius Johannis de Moubray et Johanna, uxor ejus, prædicta maneria de Wassyngtone, et Fyndone, cum pertinentiis, et advocacionem prædictam, et undecim acras prati et dimidium, cum pertinentiis, de prædicto manerio de Seggewyke, exceptis prædictis duabus acris terræ in Wassyngtone, et etiam uno messuagio et una carucata terræ in prædicto manerio de Wassyngtone, et quidam Thomas, Vicarius ecclesiæ de Horsham, eadem messuagium et carucata terræ cum pertinentiis, quæ sunt parcella prædicti manerii de Wassyngtone modo ingressi sunt, et illa tenent contra formam finis prædicti, quod per probos, &c., scire faceret prædictis Johanni filio Johannis, et Johannæ, et Thomæ, Vicario ecclesiæ de Horsham, quod essent hic ad hunc diem, scilicet a die Paschæ in tres septimanas, ostensuri si quid pro se haberent vel dicere scirent quare prædicta maneria de Wassyngtone et Fyndone cum pertinentiis, advocatio, et undecim acra prati et dimidium, cum pertinentiis, de prædicto manerio de Seggewyke, exceptis duabus acris terræ cum pertinentiis in Wassyngtone, post mortem prædictorum Willelmi, Ricardi, et Petri, præfato Thomæ filio et heredi prædicti Petri juxta formam finis prædicti remanere non debeant si, &c. Et Vicecomes modo mandat quod scire fecit eis per Willelmum Comsone et Robertum atte Lynde, &c. Et modo veniunt tam prædictus Thomas filius Petri, in propria persona sua, quam prædicti Johannes, Johanna et Thomas Vicarius per attornatos suos.

Et idem Thomas filius Petri petit inde executionem, &c.

Et Johannes et Johanna dicunt quod, cum prædictus Thomas filius Petri petit executionem de undecim acris prati et dimidio, cum pertinentiis, de prædicto manerio de Seggewyke, præfatum illud non est nisi decem acra prati tantum, et est præfatum illud parcella manerii de Grenestede et non parcella manerii de Seggewyke, et, tam quoad præfatum illud quam ad omnia alia maneria, advocacionem, et tenementa, unde prædictus Thomas filius Petri

petit executionem versus ipsos Johannem et Johannam, &c., dicunt quod idem Thomas filius Petri non debet inde executionem habere, &c., dicunt enim quod post mortem prædicti Willelmi de Breuse, quem prædictus Thomas filius Petri superius supponit fuisse partem finis prædicti, unde istud breve de *Scire facias* emanavit, maneria prædicta et advocatio, simul cum aliis terris et tenementis de quibus idem Willelmus obiit seisisus, fuerunt seisisa in manum domini Edwardi nuper Regis Angliæ avi domini Regis nunc, pro eo quod idem Willelmus castrum et baroniam de Brembre simul cum aliis tenementis tenuit de eodem domino Rege in capite, &c., per quod Willelmus filius et heres ejusdem Willelmi secutus fuit versus ipsum Dominum Regem de habendo ea extra possessionem Regis per *Diem clausit extremum*, &c. Et prædictus Ricardus filius Willelmi de Breuse, cui prædictus Thomas filius Petri supponit per prædictum finem maneria prædicta talliata fuisse, sequebatur similiter versus eundem dominum Regem pro executione habenda, virtute finis prædicti, de prædictis maneriis, &c. Et dicunt quod postmodum pro eo quod compertum fuit per inquisitiones coram Escaetore per *Diem clausit extremum* captas, et in Cancellaria ejusdem Domini Regis retornatas, quod prædictus Willelmus de Breuse obiit seisisus de omnibus terris et tenementis prædictis in dominico suo ut de feodo, idem Rex avus, &c., maneria et advocationem prædicta cum pertinentiis, simul cum aliis terris et tenementis, sic in manum suam seisisis, præfato Willelmo filio et heredi ejusdem Willelmi de Breuse reddidit. Et postea prædictus Ricardus sequebatur in Curia ipsius Regis versus prædictum Willelmum filium Willelmi per breve de *Scire facias* de executione habenda secundum formam finis prædicti de prædictis maneriis et advocatione prædicta, et etiam de executione habenda, virtute cujusdam alterius finis, de manerio de Grenestede cum pertinentiis, per quod prædictus dominus Rex avus, &c., perpendens quod, si idem Ricardus prædicta maneria et advocationem, quæ sunt parcella Baronie de Brembre, versus Willelmum filium Willelmi per judicium Curie Regis recuperasset, Baronia illa demembraretur, quod in præjudicium domini sui cederet manifeste, et quam Baroniam idem dominus Rex voluit ipsum Willelmum filium Willelmi et heredes suos de eo tenere integram absque diminutione, &c., et etiam pro eo quod prædicti fines de tenementis quæ sic de eo in capite tenebantur levati fuerunt, licentia domini Regis super hoc non obtenta, et hoc ante Statutum de Finibus, &c., noluit executionem eorundem finium fieri, per quod in præsentia ipsius domini Regis et coram Concilio suo apud Norham, anno regni sui vicesimo, præfatis Willelmo filio Willelmi et Ricardo in Ordinationem ipsius domini Regis submissis, taliter ordinatum fuit quod idem Willelmus filius Willelmi

prædicta maneria cum pertinentiis, et advocationem prædictam, et similiter Baroniam illam integre sibi et heredibus suis de ipso domino Rege et heredibus suis teneret, et quod prædictus Ricardus haberet de aliis terris et tenementis ipsius Willelmi filii Willelmi, quæ non fuerunt de Baroniam prædictam, ad valentiam eorundem maneriorum cum pertinentiis et advocationis prædictæ, per rationabilem extentam, tenendam secundam formam eorundem finium, &c., virtute cujus Ordinationis prædictum placitum inter ipsos Willelmum filium Willelmi et Ricardum adtunc conquievit, &c. Et postmodum idem dominus Rex ordinavit certos homines ad extendendum omnia tenementa in prædictis finibus contenta, et etiam alia tenementa in Comitatu Sussexiæ, et manerium de Tettebury in Comitatu Gloucestriæ, quæ non fuerunt parcella Baroniam prædictam. Et postquam extenta inde facta fuit, et coram domino Rege retornata, ad majorem facti illius securitatem facta fuit quædam indentura inter prædictum Willelmum filium Willelmi de Breuse ex parte una, et Mariam quæ fuit uxor Willelmi, et prædictum Ricardum, in quatuor partes divisa et sigillis eorum et etiam sigillo ejusdem Petri filii Willelmi alternatim signata, in qua continetur quod prædictus Ricardus concessit, remisit, et quiete clamavit pro se et heredibus suis prædicto Willelmo filio Willelmi et heredibus suis totum jus et clameum quod habuit vel habere potuit in prædictis maneriis de Fyndone, Wassyngtone et Westgrenestede, cum advocationibus ecclesiarum prædictorum maneriorum cum pertinentiis, pro quibus concessione, remissione, et quiete clamancia idem Willelmus dedit et concessit eidem Ricardo duas partes manerii de Tettebury cum pertinentiis in Comitatu Gloucestriæ, quod quondam fuit Willelmi patris sui, et concessit eidem Ricardo tertiam partem ejusdem manerii, quam prædicta Maria tenuit in dotem, et quam eadem Maria ad instantiam dicti Willelmi filii Willelmi eidem Ricardo tunc reddidit. Concessit etiam idem Willelmus eidem Ricardo maneria de Cheresworth et Seggewyke cum pertinentiis in Comitatu Sussexiæ habenda et tenenda eidem Ricardo et heredibus suis de corpore suo legitime procreatis de capitalibus dominis, &c. [with the successive remainders as before]. Concessit etiam idem Willelmus filius Willelmi et confirmavit pro se et heredibus suis prædicto Petro de Breuse fratri prædicti Ricardi manerium de Manyngforde cum pertinentiis in Comitatu Wiltes, una cum advocatione ecclesiæ ejusdem manerii, tenendum de capitalibus dominis feodi, &c., secundum formam cujusdam finis levati in Curia Regis Edwardi avi domini Regis nunc inter Amcioiam Comitissam Devoniam querentem et Willelmum de Breuse (cujus unus heredum ipse Johannes filius Johannis est, et cujus statum ipsi Johannes et Johanna modo habent, &c.), deforciantem, per

quem idem manerium eidem Petro remansit, quod quidem manerium dictus Willelmus filius Willelmi petiit versus prædictum Petrum per breve *Mortis Antecessoris*, &c., habenda et tenenda prædicta maneria cum pertinentiis pro valentia et in allocationem prædictorum maneriorum de Wassyngtone et Fyndone et advocacionem [*sic*] &c., et etiam pro manerio de Grenestede, quæ fuerunt parcella Baronis prædictæ, &c. Et proferunt hic quandam partem indenturæ prædictæ sigillis ipsorum Petri et Ricardi quæ præmissa testatur in hæc verba. [The deed is here set out at length in the record. The first part of it is to the effect stated above, but it contains the following additional particulars:—] Concessit etiam idem Willelmus filius Willelmi prædictæ Mariæ, ad totam vitam ipsius Mariæ, in excambium pro manerio de Seggewyke quicquid idem Willelmus habuit vel habere potuit in Cusande sine aliquo retenemento, salva regalitate, et quicquid habuit in villa de Horsham, salva regalitate. Et etiam remisit et quiete clamavit eidem Mariæ, tota vita ipsius Mariæ, quatuor libratas, quindecim solidatas, et decem denariatas annui redditus, quas idem Willelmus percipere solebat per manus prædictæ Mariæ pro manerio de Beddinge. Et præterea idem Willelmus filius Willelmi concessit eidem Mariæ, ad totam vitam ipsius Mariæ, duas acras terræ et novem acras prati cum pertinentiis in Grenestede, et decem acras prati cum pertinentiis in eadem villa, quæ vocantur Savages Mede.

The deed was witnessed by William de Marchia (the Treasurer), Philip de Wyleby (the Chancellor of the Exchequer), John de Metyngham and Robert de Hertford (Justices of the Common Bench), John de Cobeham and Peter de Leycestre (Barons of the Exchequer), and others, and was enrolled both in the Exchequer and in the Common Bench.

John and Joan make *profert* of a transcript of an Inquisition taken before the Escheator on Saturday, the Morrow of the Purification of the Virgin Mary, 19 Edward I., of the lands held by William de Breuse on the day of his death. This is set out at length, and shows that he held the Barony and Castle of Bramber, with the manors in dispute, of the king *in capite* by military service, "cum libertatibus, et libera curia, et quinque hundredis et dimidio, ad dictam Baroniam spectantibus." The details usually found in an Inquisition *post mortem* follow, and at the end William de Breuse the younger is found to be the son and next heir of William de Breuse the elder. He was of age to receive his land, and was married in the tenth year of the reign.

They also make *profert* of a transcript of the Ordinance made in the King's Council in the King's presence, which also is set out at length.

Et dicunt quod prædictus Ricardus prædicta maneria de Tettebury, Seggewyke, et Cheresworth, prætextu Ordinationis et indenturæ prædictarum, pro valentia et in escambium pro prædictis maneriis de Wassyngtone et Fyndone et advocacione prædicta et manerio de Grenestede, quæ fuerunt parcella Baronie prædictæ, intravit et seisinam suam inde continuavit tota vita sua, Ordinationem et indenturam prædictas acceptando. Post cujus mortem, pro eo quod prædictus Ricardus obiit sine herede de corpore suo procreato, prædictus Petrus intravit in eisdem maneriis de Tettebury, Seggewyke, et Cheresworth, virtute Ordinationis et indenturæ prædictarum, simul cum prædicto manerio de Manyngforde, et ea in valentiam et escambium prædictorum maneriorum de Wassyngtone et Fyndone et advocacionis prædictæ, et etiam pro prædicto manerio de Grenestede, tenuit tota vita sua, prædictas Ordinationem et indenturam acceptando. Post cujus mortem idem Thomas intravit in prædictis maneriis de Tettebury, Seggewyke, et Cheresworth, et in prædicto manerio de Manyngforde ut filius et heres prædicti Petri, et ea similiter in valorem et escambium eorundem maneriorum de Wassyngtone, Fyndone [et] advocacionis prædictæ, et prædicti manerii de Grenestede, quæ sunt de Baronia prædicta, secundum formam Ordinationis et indenturæ prædictarum tenuit, et adhuc est tenens de eisdem, pro voluntate sua, prædictas Ordinationem et indenturam acceptando, &c. Unde petit judicium si prædictus Thomas executionem de prædictis maneriis de Wassyngtone et Fyndone, seu de advocacione prædicta habere debeat, &c.

Et Thomas Vicarius, quoad tenementa unde prædictus Thomas filius Petri petit executionem versus eum, &c., dicit quod ipse tenet tenementa illa ex dimissione prædicti Johannis filii Johannis de Moubray, quamdiu ipse est Vicarius prædictæ ecclesiæ de Horsham, sine quo ipse non potest prædicto Thomæ inde repondere. Et petit auxilium de ipso Johanne filio Johannis, &c.

Ideo præceptum est Vicecomiti quod per probos, &c., scire faciat prædicto Johanni filio Johannis quod sit hic a die Sanctæ Trinitatis in xv dies ad respondendum simul, &c., si, &c.

Et Thomas filius Petri quoad prædictum pratum, &c., dicit quod pratum illud est parcella prædicti manerii de Seggewyke prout ipse superius supponit, et non parcella prædicti manerii de Grenestede, et hoc petit quod inquiretur per patriam. [Issue is joined on this point, and the *Venire* awarded.]

[Some adjournments follow. After which John son of John de Moubray in answer to the aid-prayer] jungit se prædicto Thomæ Vicario, &c., in respondendo, &c. Et iidem Thomas Vicarius, et Johannes filius Johannis qui se junxit, &c. eandem responsionem modo dant hic in Curia prædicto Thomæ filio Petri

quoad prædicta mesuagia et carucatam terræ, quæ sunt parcella prædicti manerii de Wassyngtone, quam iidem Johannes filius Johannis, et Johanna superius dederunt et adhuc dant quoad tenementa unde ipsi sunt tenentes, &c. Et petunt iudicium si prædictus Thomas filius Petri executionem inde versus eos habere debeat, &c.

Et Thomas filius Petri quoad hoc quod prædicti Johannes, Johanna, et Thomas Vicarius dicunt quod prædictus Willelmus antecessor prædicti Johannis, qui fuit pars prædicti finis, obiit seisitus, &c., et per inquisitionem de officio captam per le *Diem clausit extremum* officium deservitum fuit pro prædicto Willelmo filio Willelmi, et tenementa quæ fuerunt prædicti patris sui fuerunt ei liberata, et etiam quod finis, &c., levatus fuit ante Statutum de Finibus, &c., licentia domini Regis super hoc non obtenta, et de eo quod Ordinatio prædicta de consensu domini Regis facta fuit, ipsum Thomam filium Petri non onerat, et inde petit recordum Curie, &c. Per quod ad ea non habet necesse respondere. Sed quoad hoc quod ipsi supponunt prædictum Ricardum fuisse partem prædictæ indenturæ quam hic protulerunt, &c., et eundem Ricardum et prædictum Petrum apposuisse sigilla sua eidem indenturæ, &c., ipse non cognoscit quod prædictus Ricardus eidem indenturæ sigillum suum apposuit nec quod iidem Ricardus et Petrus tunc temporis fuerunt plenæ ætatis, &c., et similiter ubi superius supponunt in responsione sua prædicta prædictum Ricardum secutum fuisse quoddam breve de *Scire facias* versus prædictum Willelmum antecessorem ipsius Johannis de prædictis maneriis de quibus idem Thomas modo petit executionem, &c. et per hoc expresse cognoverunt quod idem Ricardus nihil habuit in eisdem tenementis nisi quoddam jus in actione in feodo talliato, &c., quod quidem jus ipse Ricardus non potuit extinguere nisi pro tempore suo, et maxime versus ipsum Thomam qui est extraneus perquisitor, &c., per viam de remanere, &c., in feodo talliato, et qui nihil clamat per medium ejusdem Ricardi, et in prædicta indentura non sit aliqua mentio de escambio, &c., nec de valentia, &c., nec supponitur in eadem indentura, seu in responsione sua, aliqua transmutatio possessionis, &c., sed expresse ejus contrarium. Et dicit quod prædictus Willelmus filius Willelmi, antecessor prædicti Johannis filii Johannis, et cujus heres ipse est, per scriptum suum, quod hic profert, remisit, relaxavit, et quiete clamavit prædicto Petro patri ipsius Thomæ et cuidam Agneti quæ fuit uxor Henrici Husee, quam idem Petrus tunc fuerat desponsaturus, et heredibus de corporibus ipsorum Petri et Agnetis exeuntibus totum jus et clameum quod habuit in prædicto manerio de Tettebury cum pertinentiis. Et dicit quod ipse est filius et heres prædictorum Petri et

Agnetis per formam prædictam, et sic expresse probatur quod status prædictorum Petri et Ricardi de prædicto manerio de Tettebury fuit per viam de perquisito, et non per viam escambii nec valentiæ, &c., ad quas quidem indenturam et Ordinationem, &c., ipse Thomas omnino est extraneus, unde petit iudicium et executionem, &c.

Et quoad manerium de Seggewyke dicit quod ipse tenet manerium illud virtute finis prædicti, et prædictum manerium de Cheresworth virtute cujusdam alterius finis levati in Curia domini Edwardi quondam Regis Angliæ avi domini Regis nunc coram Salomone de Roffa, et sociis suis tunc Justiciariis ipsius avi, &c., itinerantibus, apud Wyntoniam, a die Sancti Michaelis in xv dies anno regni sui nono, inter Amiciam de Ripariis, Comitissam Devonix, querentem, et Willelmum de Breous deforciantem, de manerio illo et quibusdam aliis maneriis, per quem finem prædictus Willelmus recognovit prædicta maneria cum pertinentiis esse jus ipsius Amiciæ ut illa quæ eadem Amicia habuit de dono prædicti Willelmi, et pro illa recognitione, &c. prædicta Amicia concessit prædicto Willelmo eadem maneria cum pertinentiis habenda et tenenda eidem Willelmo de capitalibus dominis feodi illius per servitia quæ ad illa tenementa pertinent, tota vita ipsius Willelmi, [with successive remainders to Richard son of William in tail, and to Peter brother of Richard in tail] cujus quidem finis transcriptum missum est in Curia hio per breve Regis ad sectam ipsius Thomæ, et residet inter recorda sine die.

Et quoad prædictum manerium de Manyngforde dicit quod ipse tenet manerium illud virtute cujusdam alterius finis levati in præfata Curia dicti Edwardi Regis avi, &c., coram præfatis Justiciariis Itinerantibus, apud Wyntoniam, anno regni sui nono, inter præfatum Amiciam et prædictum Willelmum de Breouse, per quem finem idem Willelmus recognovit prædictum manerium cum pertinentiis esse jus ipsius Amiciæ ut illud quod eadem Amicia habuit de dono ipsius Willelmi, et pro illa recognitione eadem Comitissa concessit eidem Willelmo [for life, with remainder to Peter father of Thomas in tail. *Profert is made of a part of the fine.*]

Et ex quo ipse prædicta maneria de Seggewyke, Cheresworth, et Manyngforde tenet ut illa qua ei remanserunt virtute finium prædictorum, ut prædictum est, petit iudicium si per aliquam Ordinationem seu compositionem factas ex post facto, ad quos idem Thomas non fuit pars, ab executione, &c., de prædictis maneriis de Wassyngtone et Fyndoue cum pertinentiis et advocacione prædicta per finem istam in persona sua talliatis præcladi debeat, &c. Et petit executionem, &c., tam versus Johannem et Johannam quam versus prædictos Thomam Vicarium et Johannem qui se junxit, &c.

[Successive adjournments follow until the Octaves of Hilary in the following year. Then]

Iidem Johannes, et Johanna, et Thomas Vicarius dicunt quod, qualitercumque prædictus Thomas filius Petri superius dicit quod ipsi in responsione sua ipsum Thomam filium Petri de pluribus in eadem responsione contentis non onerant, &c., per quod idem Thomas filius Petri supponit ipsum non habere necesse respondere, &c., dicunt quod de omnibus in eadem responsione sua contentis ipsum Thomam filium Petri onerant ad eum excludendum de executione prædicti finis habenda. Et de hoc petunt recordum Curie, &c. Et dicunt quod ex quo prædictus Thomas filius Petri non dedit prædicta maneria et advocacionem, &c., unde petit executionem, esse parcellam Baronie de Brembre prædictæ et de domino Rege tenta in capite, et seisinam eorundem maneriorum et advocacionis prædictæ, &c., et etiam maneriorum de Seggewyke, Chere[s]werth, Grenestede et Tettebury, post mortem prædicti Willelmi de Breuse, quem prædictus Thomas filius Petri fuisse partem prædicti finis in manum domini Edwardi tunc Regis Angliæ avi, &c., ratione prædicta fuisse partem¹ et per ipsum Regem Willelmo filio prædicti Willelmi ut filio et heredi liberatam, pro eo quod compertum fuit per inquisitiones captas per *Diem clausii extremum* quod prædictus Willelmus pater suus obiit seiscitus de omnibus maneriis prædictis in dominico suo ut de feodo, &c., et ea tenuit de domino Rege in capite, &c., nec potest dedicere prædictum finem esse levatum ante Statutum de Finibus, licentia Regis super hoc non obtenta, de tenementis quæ sic de eo in capite tenebantur, prout per eundem finem patet manifeste, nec potest dedicere Ordinationem in Concilio domini Regis super præmissis superius allegatam, et super hoc indenturam, ad quam Ricardus de Breuse, avunculus prædicti Thomæ, cujus heres ipse est, fuit pars, esse factam, nec dedit quin status quem prædictus Ricardus avunculus, &c., habuit in maneriis de Tettebury, Seggewyke, et Cheresworth fuit per Ordinationem et indenturam prædictas, et ipsum Ricardum eadem maneria, pro valentia et in excambio prædictorum maneriorum de Wassyngtone et Fyndone et advocacionis ecclesie ejusdem manerii de Fyndone, et etiam manerii de Grenestede, tota vita sua tenuisse, Ordinationem et indenturam prædictas acceptando. Et post mortem ejusdem Ricardi, quia obiit sine herede de se, non dedit prædictum Petrum patrem suum virtute Ordinationis et indenturæ prædictarum prædicta maneria de Tettebury, Cheresworth, et Seggewyke intrasse, et ea simul cum manerio de Manyngforde per formam Ordinationis et indenturæ prædictarum tota vita sua tenuisse

¹ There appears to be some mistake in the roll in this passage.

pro valentia et, in excambium ut supradictum est, prædictas Ordinationem et indenturam acceptando, nec dedit quin ipse post mortem prædicti Petri patris sui, ut filius et heres ejusdem Petri, prædicta maneria de Tettebury, Cheresworth, Seggewyke et Manyngforde virtute Ordinationis et indenturæ prædictarum intravit, et eadem maneria pro valentia, &c., ut supradictum est, tenuit et adhuc tenet pro voluntate sua, Ordinationem et indenturam prædictas acceptando, petunt judicium, &c. Et quoad hoc quod prædictus Thomas filius Petri asserit se tenere prædicta maneria de Cheresworth et Seggewyke virtute finium prædictorum, &c., et prædictum manerium de Tettebury virtute prædicti scripti quietelamancie, &c., dicunt quod ex quo prædictus Thomas non dedit quin prædictus Ricardus avunculus suus prædicta maneria de Cheresworth et Seggewyke, virtute Ordinationis et indenturæ prædictarum intravit, et illum statum in prædictis maneriis tota vita sua continuavit, post cujus mortem, quia obiit sine herede de se, prædictus Petrus pater, &c., in prædictis maneriis per formam Ordinationis et indenturæ prædictarum intravit, et illum statum in prædictis maneriis tota vita sua continuavit, post cujus mortem idem Thomas, ut filius et heres prædicti Petri, in prædictis maneriis per formam Ordinationis et indenturæ prædictarum intravit, et statum illum hucusque pro voluntate sua continuavit, petunt judicium si prædictus Thomas dicere possit se tenere prædicta maneria alio modo quam virtute Ordinationis et indenturæ prædictarum, maxime cum nullum tempus ostendit Curie sive aliquam status prædictorum Ricardi et Petri vel sui interruptionem quando prædicti fines exequi potuissent, &c.

Et quoad manerium de Tettebury dicunt quod prædictus Thomas superius placitando cognovit prædictum scriptum factum fuisse prædicto Petro patri suo, manerio illo tunc in seisinâ ejusdem Petri existente, ex quo non dedit quin status quem prædictus Petrus habuit in prædicto manerio tempore confectionis prædicti scripti fuit per formam et virtutem Ordinationis et indenturæ prædictarum post mortem prædicti Ricardi fratris sui quia obiit sine herede de se, et quin prædictus Petrus statum illum de prædicto manerio tota vita sua continuavit, post cujus mortem idem Thomas, ut filius et heres prædicti Petri, manerium illud, per formam et virtutem Ordinationis et indenturæ prædictarum, intravit et illud adhuc tenet, &c., petunt judicium si ad illud scriptum necesse habeant respondere, vel si prædictus Thomas dicere possit se tenere prædictum manerium alio modo quam virtute Ordinationis et indenturæ prædictarum, &c.

Et quoad manerium de Manyngforde dicunt quod prædictus Willelmus filius Willelmi de Breuse tulit quandam Assisam Mortis Antecessoris versus prædictum Petrum, &c., et petiit

prædictum manerium de seisina prædicti Willelmi patris sui, pendente qua assisa, &c, prædicta Ordinatio et indentura factæ fuerunt, &c., et per illam concordiam idem Willelmus concessit et confirmavit eidem Petro prædictum manerium tenendum secundum formam indenturæ et Ordinationis prædictarum simul cum prædictis maneriis de Tettebury, Seggewyke, et Cheresworth, post mortem prædicti Ricardi fratris sui, pro valentia et in excambium prædictorum maneriorum de Wassyngtone, Fyndone, et Grenestede, et advocacionis ecclesiæ, &c., per quod idem Petrus idem manerium tota vita sua tenuit, Ordinationem et indenturam prædictas acceptando, post cujus mortem idem Thomas, ut filius et heres, &c., idem manerium de Manyngforde per formam earundem Ordinationis et indenturæ intravit, et adhuc tenet, &c., unde petunt judicium si prædictus Thomas dicere possit se illud tenere alio modo quam per formam Ordinationis et indenturæ prædictarum, et si executionem de prædictis maneriis de Wassyngtone et Fyndone, sive de advocacione prædicta versus eos habere debeat, &c.

After an adjournment to the Quinzaine of the following Easter :

Thomas filius Petri dicit quod prædicti Johannes et Johanna in responsione sua prædicta allegant diversas causas peremptorias, ad quas, ut sibi videtur, ipse de jure non habet necesse respondere, dicit tamen, ut prius, quoad prædictam inquisitionem ex officio captam, per quam compertum fuit quod Willelmus de Brewosa fuit seisis in dominico suo ut de feodo, die quo obiit, hoc eis contra fines prædictos per quos ipse nunc sequitur pro executione habenda valere non debet, per quos quidem fines status prædicti Willelmi de Brewosa proavi prædicti Johannis, cujus heres ipse est, probatur esse ad terminum vitæ ipsius Willelmi tantum. Dicit etiam quod prædictus Ricardus de Brewes die Sabbati proxima post festum Sancti Hilarii anno regni Regis Edwardi avi domini Regis nunc sexto decimo, apud Horsham, coram Radulpho de Hengham et Johanne Pecche Justiciariis ad assisas in comitatu prædicto capiendas assignatis tulit quandam Assisam Novæ Disseisinæ versus prædictum Willelmum de Brewosa, de prædicto manerio de Cheresworth cum pertinentiis, et de quibusdam aliis tenementis, per quam compertum fuit quod prædictus Willelmus de Brewosa, postquam Amicia, Comitissa Devonæ, retradidit prædicto Willelmo prædicta manerium et tenementa, concessit et tradidit eidem Ricardo prædicta manerium et tenementa, et illa remisit per quoddam scriptum quod prædictus Willelmus eidem Ricardo inde fecit, et, postquam idem Ricardus per concessionem illam extitisset inde in plena et pacifica seisina, prædictus Willelmus et alii ipsum injuste et sine judicio disseisiverunt, &c., per quod consideratum fuit quod prædictus Ricardus recuperaret inde

seisinam suam, &c. Dicit etiam quod die Veneris proxima ante festum Sancti Gregorii anno regni ejusdem Regis avi, &c., quarto decimo, apud Horsham, coram eisdem Justiciariis quidam Henricus de Wyteweye tulit quandam Assisam Novæ Disseisinæ versus prædictum Willelmum de Brewosa et alios de maneriis de Fyndone, Wassyngtone, et Seggewyke, per quam compertum fuit quod prædictus Willelmus feoffavit ipsum Henricum de prædictis maneriis per chartam suam, et, postquam idem Henricus fuit inde in pacifica seisina, prædictus Willelmus et alii ipsum injuste et sine judicio disseisiverunt, &c., per quod consideratum fuit quod prædictus Henricus recuperaret inde seisinam suam, &c., per quas quidem assisas status prædictæ Amiciæ probatur de tenementis de quibus finis inter ipsam et eundem Willelmum levatur, et non intendit quod contra fines et judicia prædicta admitti debeant ad dicendum statum ipsius Willelmi esse alium quam per fines et judicia prædicta probatur.

Et quoad hoc quod ipsi dicunt statum prædictorum Ricardi et Petri de maneriis de Seggewyke, et Cheresworth, esse vi et virtute prædictæ indenturæ dicit, ut prius, quod ipse ad indenturam prædictam non habet necesse respondere. Dicit etiam quod nec prædictus Ricardus nec prædictus Petrus unquam aliquid habuit in prædictis maneriis tempore quo ipsi supponunt indenturam illam factam fuisse, nec unquam postea, virtute indenturæ prædictæ. Et hoc paratus est verificare. Unde dicit quod, rationibus istis, et rationibus superius allegatis, non intendit quod ipsi dicere possint statum ipsius esse per viam excombii, &c. Et dicit quod status quem ipse nunc habet in maneriis illis et in manerio de Manyngforde est in virtute finium prædictorum, et non vi indenturæ prædictæ. Et hoc paratus est verificare.

Et quoad manerium de Manyngforde dicit quod prædicta indentura, quam ipsi alias hic protulerunt in Curia, supponit prædictum Ricardum nihil habuisse in eodem manerio, sed quod prædictus Petrus illud tunc tenuit per prædictum finem inde levatum, et quod prædictus Willelmus tulit inde quandam Assisam Mortis Antecessoris versus ipsum Petrum, et quod super hoc concordatum fuit quod prædictus Petrus teneret manerium illud vi et virtute finis prædicti, unde petit judicium si ipsi ad dicendum statum ipsius Thomæ esse alium quam per finem illum &c., admitti debeant, &c.

Et quoad manerium de Tettebury dicit quod, ex quo ipse nihil clamat in eodem manerio per medium prædicti Ricardi, eo quod status ipsius Ricardi, quia obiit sine herede de se, per mortem ejusdem Ricardi omnino exstinguebatur, sed tanquam extraneus perquisitor in feodo talliato, et in indentura prædicta nulla fit mentio quod prædictus Petrus vel aliquis alius, veluti in tertia persona, aliquid pro ipso Petro loquebatur, sed tantummodo supponit ipsum ad

rem inter alios actam sigillum suum apposuisse, quod ei, licet ita fuisset, de jure præjudicare non debet, desicut, ut ipsi supponunt, hoc fuit ante status ipsius Petri inchoationem, non intendit quod status ipsius Thomæ dici potest esse in excambium. Et licet quod, non obstantibus rationibus prædictis, status prædicti Thomæ poterit dici in excambium, &c., dicit quod, ex quo ipse protulit quoddam scriptum quieteclamancie sub nomine Willelmi de Brewosa, antecessoris prædicti Johannis, factum Petro de Brewosa, quod quidem scriptum idem Johannes non dedit, per quod scriptum quilibet status conditionalis vel excambii, si quis antea fuerit, penitus fuit adnullatus, ita quod contra factum illud de jure admitti non debent ad dicendum statum ipsius Thomæ in manerio illo esse alterius conditionis quam per idem factum supponitur. Unde rationibus istis, et rationibus superius allegatis, non intendit quod ipse ab executione sua prædicta præcludi debeat, et petit executionem, &c.

After an adjournment to the Octaves of Trinity, the defendants Dicunt quod, quoad hoc quod prædictus Thomas filius Petri dicit quod ipsi in responsione sua allegant diversas causas peremptorias ad quas, ut sibi videtur, non habet necesse respondere, dicunt quod ad illam responsionem, tanquam ad unam responsionem, ipse superius replicavit, et petiit judicium si ipse ab executione sua habenda per hoc præcludi deberet, per quod ipse modo ad dicendum quod ad illam responsionem non habet necesse respondere admitti non debet, &c. Et, quoad hoc quod prædictus Thomas filius Petri dicit quod hoc quod compertum fuit per inquisitiones captas per *Diem clausit extremum* quod Willelmus de Breuse obiit seisis de manerio de Chersworth et de aliis tenementis, &c., prædictis Johanni, et Johannæ, et Thomæ Vicario valere non debet, &c., eo quod prædictus Ricardus de Breuse tulit quandam Assisam Novæ Disseisinæ versus præfatum Willelmum, &c., de prædicto manerio, &c., per quam compertum fuit quod prædictus Willelmus, postquam Amicia Comitissa Devonie retradidit prædicto Willelmo prædictum manerium et tenementa, &c., et ipse manerium illud et tenementa concessit præfato Ricardo, &c., quod prædictus Willelmus eum postea injuste et sine judicio disseisivit, &c., dicunt quod ipsi ad recordum illud non habent necesse respondere, et licet necesse haberent, &c., dicunt quod per recordum illud quod allegat expresse probatur quod status quem supponit prædictum Willelmum per finem prædictum in prædicto manerio habuisse penitus adnullabatur, &c., et ex quo non dedit quin prædictus Willelmus obiit seisis de prædicto manerio, &c., et compertum fuit per inquisitiones captas per *Diem clausit extremum*, quæ non possunt dedici, quod obiit seisis in dominico suo ut de feodo. citius intelligendum est quod obiit seisis de tali statu quo per

prædictas inquisitiones compertum fuit quam alio modo. Et quo ad hoc quod prædictus Thomas filius Petri dicit quod quidam Henricus de Wyteweye tulit quandam Assisam Novæ Disseisinæ versus prædictum Willelmum de Breuse de maneriis de Fyndone, Wassyngtone, et Seggewyke, per quam compertum fuit quod, postquam prædictus Willelmus ipsum Henricum de prædictis maneriis feoffavit, ipsum injuste et sine judicio disseisivit, &c. dicunt, ut prius, quod ipsi ad recordum illud non habent necesse respondere, et licet, &c., dicunt quod hoc quod compertum fuit per inquisitiones captas per *Diem clausit extremum* de statu ipsius Willelmi in maneriis prædictis, die quo obiit, in nullo per allegationem recordi prædicti improbat, et, ex quo per hoc quod compertum fuit per inquisitiones prædictas, &c., ostenditur quod dominus Rex de talibus tenementis quæ fuerunt parcella Baronis et de ipso tenta in capite, quando compertum fuit per inquisitiones captas per *Diem clausit extremum* et in Cancellariam suam, ut decet, retornatas, quod tenens suus obiit seiscitus in dominico suo ut de feodo, melius et securius potuit et debuit per submissionem partium prædictarum in casu superius allegato ordinare, &c., non intendunt quod allegatio recordi illius eis præjudicare debet, &c.

Et quoad hoc quod prædictus Petrus filius Petri prætendit verificare quod nec prædictus Ricardus nec prædictus Petrus unquam aliquid habuerunt in prædictis maneriis de Cheresworth, et Seggewyke, virtute indenturæ prædictæ, &c., dicunt quod, ex quo prædictus Thomas filius Petri superius placitando in replicatione sua contra responsionem prædictorum Johannis, et Johannæ, et Thomæ Vicarii, &c., præcise petiit judicium, ex quo ipse fuit extraneus perquisitor in feodo talliato et nihil clamavit per medium prædicti Ricardi, &c., et ipsi in responsione sua prædicta cognoverunt quod prædictus Ricardus nihil habuit in prædictis maneriis, &c., nisi quoddam jus in actione, quod ipse non potuit nisi pro tempore suo extinguere, ut patet per recordum, si ipse per tantum ab executione sua præcludi deberet, &c., et super hoc præcise morabatur in judicio de executione sua habenda, non dedicens quin prædicti Ricardus et Petrus, ut ei impositum fuit, per Ordinationem et indenturam prædictas de prædictis maneriis seisciti fuerunt, &c., super quo, ut patet per recordum, sæpius adjornati sunt, &c., unde non intendunt quod ipsi modo ad illam verificationem necesse habeant respondere, &c. Et etiam, ex quo non potest dedicare quin compertum fuit per inquisitiones captas per *Diem clausit extremum* quod prædictus Willelmus de Breuse obiit seiscitus in dominico suo ut de feodo de omnibus tenementis prædictis, tam de illis quæ sunt parcella Baronis, &c., quam de aliis, &c., et quod omnia tenementa prædicta de domino Rege tenebantur in capite, ut superius alle-

gatur, et prædicto Willelmo filio Willelmi, ut filio et heredi, per ipsum Regem integraliter liberata, nec potest dedicere quin prædicti fines levabantur ante Statutum de Finibus, licentia Regis super hoc non obtenta, de tenementis quæ sic de eo in capite tenebantur, ut per eosdem fines patet manifeste, &c., nec dedit Ordinationem et indenturam prædictas super præmissis per ipsum Regem et Concilium suum rationibus superius allegatis esse factas, ad quas prædictus Ricardus, avunculus suus, prædicta Maria, avia sua, et prædictus Petrus, pater suus, quorum heres ipse est, fuerunt partes, &c., per quas quidem Ordinationem et indenturam quæ de recordo existunt, expresse probatur quod prædictus Willelmus et Maria prædicta maneria de Tettebury, Cheresworth, et Seggewyke præfato Ricardo in Curia domini Regis concesserunt et reddiderunt tenenda pro valentia et in excambium prædictorum maneriorum de Wassyngtone, Fyndone, et Grenestede, et advocacionis prædictæ, &c., nec dedit quin prædictus Ricardus seisisus fuit, per liberationem eorundem Willelmi et Mariæ, de prædictis maneriis de Tettebury, Cheresworth, et Seggewyke virtute Ordinationis et indenturæ prædictarum, et illam seisinam tota vita sua continuavit, et, quia obiit sine heredo de se, prædictus Petrus pater suus in prædictis maneriis de Tettebury, Cheresworth, et Seggewyke intravit, et ea, simul cum manerio de Manyngforde tota vita sua, per formam Ordinationis et indenturæ prædictarum, tenuit, post cujus mortem idem Thomas, ut filius et heres prædicti Petri, maneria prædicta de Tettebury, Cheresworth, Seggewyke, et Manyngforde per formam Ordinationis et indenturæ prædictarum intravit, et ea adhuc tenet, &c., petunt iudicium si prædictus Thomas dicere possit se illa tenere alio modo quam per prædictas Ordinationem et indenturam, &c., et si executionem versus eos de prædictis maneriis de Wassyngtone, et Fyndone, sive de advocacione prædicta, habere debeat, &c.

Then follow several adjournments, the last of which was to the Quinzaine of Easter in the nineteenth year of the reign. A Jury then gave a verdict on the issue joined as to a question of fact, viz.:—quod prædictum pratum continet in se decem acras, et quod idem pratum non est parcella prædicti manerii de Seggewyke.

Ideo consideratum est quod prædictus Thomas filius Petri nihil capiat per breve suum quo ad hoc.

As to the rest, successive adjournments follow, as far as three weeks after Easter, in the twenty-first year of the reign, when John son of John de Mowbray had a Protection, as being in the King's service, and about to set out towards Scotland, and the plea was put without day.

Afterwards *Scire Facias* issued anew to warn the defendants to appear at the Octaves of Hilary, in the twenty-second year of the reign. There were again several adjournments, the last of which was to the Quinzaine of Hilary in the following year.

Ad quem diem prædicta loquela, simul cum omnibus placitis hic in Banco, adjornata fuit per breve domini Regis de Communi Concilio, &c., ordinatum, et per publicam proclamationem, usque ad hunc diem hic scilicet a die Paschæ in xv dies.

All the parties then appeared, and there was another adjournment to the Octaves of St. Michael.

It was then stated on behalf of the plaintiff, and not denied, that two of the parties (viz.: Joan, wife of John son of John de Moubray, and Thomas the Vicar) were dead.

Et super hoc prædictus Thomas dicit quod quidam Robertus de Saxtone unum mesuagium et unam carucatam terræ de prædicto manerio de Wassyngtone, et quidam Johannes de York unum mesuagium et unam virgatam terræ de prædicto manerio de Fyndone ingressi sunt, et ea tenent contra formam finis prædicti, et petit breve ad præmuniendum tam prædictum Johannem filium Johannis quam prædictos Robertum de Saxtone et Johannem de York essendi hic in Octabis Sancti Hilarii Ideo fiat ei breve in forma prædicta retornabile hic ad præfatum terminum.

And so this record ends.

(¹) This adjournment was by reason of the great pestilence commonly known as the Black Death, during the prevalence of which, as appears above, two of the parties died, and two persons not previously mentioned entered on a portion of the tenements in dispute.

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See *ANNUITY*.

CONTEMPT OF COURT: 180, 276.

See *WASTE*.

COSINAGE :

If a demandant in Cosinage make his descent in one way, and his father, through whom he traces descent, has on a previous occasion, on a writ of Escheat, against the same tenant, though in respect of other tenements, traced a descent from the *consanguineus* in a different way, *Quere* whether the demandant's statement of descent can be accepted, 252-254 ; 255, note 7.

See *PLEADING*.

COUNCIL :

Evidences shown to the King and his Council the ground of a *Sci. fa.* in Chancery to repeal a charter, 108.

Ordinance *coram Concilio* to prevent dismemberment of a Barony, 295.

Ordinance by the King's Writ *de Communi Concilio* to adjourn all pleas in the Common Bench by reason of pestilence, 308.

COVENANT :

Quere whether after judgment upon non-suit by Justices of Assise, a record can be made of a covenant between the parties, 188-190, 287-290.

The *Quere* answered in the affirmative, 290.

COVENANT—*cont.*

Error thereon, 290.

See *ABATEMENT OF WRITS ; PLEADING*.

CUI IN VITA.

See *ABATEMENT OF WRITS*.

CURTSEY OF ENGLAND :

Custom of Gavelkind in relation to, 222.

D

DEBT :

Action of, against Sheriff who had allowed one taken in execution of a Statute Merchant to go at large, 146-148.

Action of, where tenant in tail after possibility of issue extinct had executed a deed to the effect that he would pay 12 marks for every 40s. of waste, 260.

DECEIT :

See *ANNUITY ; AUDITA QUERELA ; PLEADING*.

DESCENT :

See *COSINAGE*.

DETINUE :

If one bring writ of Detinue in respect of a writing, and admit that he has subsequently received it back from the defendant, out of Court, he shall be amerced, 80.

If a chest be delivered by A. to B., to be redelivered at A.'s will, and if an action of Detinue be brought, B. must take issue not on the mode of bailment (as *e.g.* that he was to redeliver to C. and has done so), but on the detinue as stated in the count or declaration, 166.

If a horse be delivered by A. to B. to be re-delivered on the next day, and if an action of Detinue be brought, the issue shall be on the detinue and not on the mode of bailment, 199-201 ; but see the record, 201, note 13.

DISCONTINUANCE:

If a writ of Annuity be brought for *lx. et x. solidos* (three-score and ten shillings), and in the process subsequent to the first continuance the *x.s.* be omitted, it is a discontinuance, 86-88.

Hugh the son of Hugh, the son of Hugh le Spenser, having brought a writ of Formedon, and the words le Spenser having been omitted from the continuance after view demanded, this was held to be a discontinuance, because the defect was greater than that of a letter or a syllable, which might have been amended by the 14 Edw. III. c. 6, 198.

DOWER:

If the tenant against whom the action is brought vouch the husband's heir in several counties, and it be adjudged that the demandant recover against the heir if he have assets, and, if not, against the tenant, and if the Sheriff of the county in which the demand is made return that the heir has nothing by descent, and it be alleged that assets have descended to him since the return, a writ shall issue to the Sheriff to enquire as to the fact. If he do not return that anything has descended to the heir in fee simple, and if the other Sheriffs subsequently return that the heir has nothing by descent, the returns shall be joined, and execution awarded against the tenant, 16-22.

Guardian in socage and her dower, 50-54.

Dower *de la plus belle*, 52.

When the return of several inquests is expected in Chancery, nothing is done upon the return of one, nor until the rest are returned also, 132.

Dower demanded of a third part of common of pasture, 226-228.

DOWER—cont.

Writ of Dower said not to lie for common appendant, 228.

Question as to damages in, after essoin of demandant, 242-244.

See PLEADING; SCIRE FACIAS; VOUCHER.

DURESS.

See VENUE.

E

ELEGIT:

The obligee in a recognisance shall have against the obligor an *Elegit* in respect of the lands which the obligor had on the day of the execution of the recognisance, but not until the Sheriff return that he then had no lands shall there issue an *Elegit* in respect of the lands which the obligor had as well at the time of making the recognisance, as at any time since. Per Hillary, Ch. J. *Sed quere*, 88-90.

Execution by, 243, note 18.

ENTAIL:

Tenant in tail after possibility of issue extinct, 8.

ENTRY AD TERMINUM QUI PRÆTERIIT:

Process in, when brought by the heir, when bastardy has been alleged, when the Bishop has certified that the heir is *mulier*, and when the tenant has made default after Returnsummons, 184-188.

Aid in. See AID.

ENTRY SUR DISSEISIN:

The feoffment of the demandant's mother, with warranty, was pleaded in bar by the assignee, the tenant. The demandant alleged that he held by conveyance in fee from his father during his non-age, and that his mother had no interest in the tenements except as guardian, *ratione nutritura*. The tenant alleged that at the time when the

ENTRY SUB DISSEISIN—cont.

mother executed the deed, she had a fee in the tenements, and issue was joined thereon, 90-95.

If a tenant depart in contempt of Court, a writ of Enquiry of Damages will issue under the Statute of Gloucester, 180-182.

ENTRY UPON THE ROLL.

See ESCHEAT; QUID JURIS CLAMAT.

ESCHEAT :

Writ of, in respect of land and rent, and pleadings thereon, and in particular as to a portion of the rent voucher to warranty, and as to the residue of the rent plea that the tenant held the demesne and received the rent through the hands of villeins, and so held the land and not the rent. Issue joined on the point that the tenant held the demesne and not the rent, and the plea of the tenant entered on the roll, 62-64.

Claim by reason of, where a bastard holding of the claimant died without heir of his body, 246.

ESSOIN :

Essoin as being in the King's service lies in many cases in which a Protection is not allowed, 168.

But such an essoin, when it does lie, will be quashed, if defective in form, as it cannot be amended by the Court, like a common essoin, 168.

When a woman was essoined as being on the King's service, "because she is the nurse of Richard the son of our Lord the King," it was argued that it was sufficiently of record that the king (Edward III.) had no son Richard, and that the essoin should be quashed, but it was held that the essoiner could not be a party to try the question. The exception was nevertheless entered, 176-178.

ESSOIN—cont.

Effect of essoin for demandant in Dower, 242-244.

ESTOPPEL:

If one bring a writ of Formedon as on a gift by A. to his father and mother and the heirs of their two bodies, and it be shown that on a previous occasion he brought another writ of Formedon, supposing a gift of the same tenements to his father and mother and the heirs of the body of his father, and that he then admitted that A. did not give, the admission is only to the effect that A. did not give as supposed by the particular writ, and is no estoppel, 14.

EXCOMMUNICATION :

If a Letter of the Archbishop of Canterbury be produced in evidence of excommunication, and Letters Patent from the Pope's Judges Delegate be produced in the Common Bench to prove the annulment of the excommunication, on appeal, the latter will be of no avail against the Letter of the Metropolitan which is of record, 148-150, 151, note 4.

EXECUTION :

See ELEGIT; PROCESS; STATUTE MERCHANT; VENUE.

EXTENT :

If, in Dower, the vouchee pray a re-extent of the tenant's lands, on the ground that they have been valued too high, he may have it, the extent not having been made by Inquest of Office, 16-18.

F

FINE OF LANDS, &c.:

Persons taking estate by fine on render not permitted to charge the land

FINE OF LANDS, &c.—cont.

to the renderor, because not seised, 80.

In a fine *sur don grant et render*, where the right of A.'s, wife is acknowledged by B., A. and his wife cannot render to B. for the life of C., so that the manor shall return to A.'s wife and her heirs, but the reversion must be saved to the renderors, viz.: A. and his wife and her heirs, 80-82.

Fine acknowledging one knight's fee and £5 of rent to be the right of A., and granting the homage and services of certain tenants to A. in fee, where the £5 issue out of the same fee, 244.

See **QUID JURIS CLAMAT.**

FINE AND NON-CLAIM, 240.**FLEET PRISON :**

The Warden of the, 172.

FORFEITURE OF MARRIAGE:

Where a verdict has passed for the plaintiff as to the tender of marriage, he shall not have double damages under the Statutes of Merton, c. 6., and Westminster the First, c. 22., but single damages only, because the land cannot be recovered by this writ, 206-208.

FORMEDON IN THE DESCENDER:

Writ of, 14-120.

See **DISCONTINUANCE; ESTOPPEL; PLEADING.**

FORMEDON IN THE REMAINDER.

Writ of, 240.

See **PLEADING.**

G**GAVELKIND :**

Custom of, in relation to the Curtesy of England, 222.

Voucher in respect of lands held in, 248.

GUARDIAN IN SOCAGE :

Rights of a woman, guardian in socage, as to dower, 50-54.

I**INFANT :**

When an infant is demandant, and his ancestor's deed is pleaded in bar, he cannot admit, or deny, or answer to it until of full age, 120-125.

INTRUSION OF WARD :

When the writ of, is the proper remedy, 208.

J**JURATA UTRUM :**

Age prayed by tenant, who claimed seignory by reason of escheat, but the seignory being traversed, issue was joined on that question, 244-248.

K**KING, THE :**

Shall be answered in any of his Courts in which he may choose his suit, whatever the jurisdiction of the Court may be, 80.

Shall not sue by petition in Parliament in respect of a matter which concerns himself, 110.

His prerogative with regard to wardships under the Statute 17 Edw. II. St. 1, 180-184.

Fine to, for Trespass, 170-172.

Ordinance of, *coram Concilio*, to prevent dismemberment of a Barony, where *Scire facias* to have execution of a fine had been sued, 295.

See **VICARAGE.**

L

LANDSBERJEANT :

An officer who summoned, attached, distrained, &c., in a manor, 33, note 15.

LIFE, ESTATE FOR :

If a manor be given by the King to A. without further limitation, nothing passes but a freehold, the reversion being saved to the King, 30.

LIVERY :

The Chancery will not execute office or livery by parcel, nor upon the return of one inquest alone when several are expected, 132-134.

M

MANOR :

The waste of a manor is appendant by way of seignory, and, though parceners inheriting the manor make partition, does not fall into severalty until it is approved (*per Counsel*), 24.

MAXIM :

In negatis non est usus, 118.

MESNE :

Process on writ of, 98.

Where the defendant admitted the liability to acquit, but issue was joined as to whether a distress had been levied through his default, judgment was given that the defendant should acquit the plaintiff of the services, before a verdict had passed on the issue, 182, 183, note 10.

MISNOMER :

Quere whether it can be alleged after verdict and before judgment, 248.

MORT D'ANCESTOR :

Form of writ of, and pleadings in, 54-60.
Pleadings in, 64.

MORTMAIN :

An exchange of lands between one Abbot and another, without license, is not permissible under the Statutes of Mortmain, 160.

Plea that an alienation was to a Bishop and his heirs, and not in mortmain to him and his successors, 210, note 1, 204.

N

NISI PRIUS :

See RECORD.

NOVEL DISSEISIN :

If assise be brought by several persons, by a common writ, in respect of waste of a manor, and it be found that they held by several titles in consequence of a partition made by co-parceners, they shall nevertheless recover seisin when it is found also that the waste remained in common, 22-28.

Writ of *Si non omnes* in, when applicable to assises of a county in general, must be entered in the record, and when applicable to one particular assise must be attached to the record, 232.

If Justices of Assise in *pais* have wrongly taken an assise, and the parties be adjourned into the Common Bench *propter difficultatem*, the latter Court will not give judgment upon the verdict, 234.

Warrantia Charta in. *See* WARRANTIA CHARTA.

NUISANCE, ASSISE OF :

Writ abated, where the plaint was wrongly made for nuisance to a water-mill, when it should have been for breaking down a weir, 82-86.

See ABATEMENT OF WRITS.

O

OFFICE :

Enquiry "of Office" where verdict of assise is in favour of men of religion, and its effect, 26-28.

OUTLAWRY :

See ACCOUNT.

OYER AND TERMINER :

Writ of, 170, 174, 175, note 7.

P

PARLIAMENT :

The King shall not sue by Petition in Parliament in respect of a matter which concerns himself, 110.

PARTITION :

When the return of several inquests is expected in Chancery, nothing is done upon the return of one alone, nor until the rest have been returned, 132.

PLEADING :

(Account.) It cannot be pleaded that a receiver is now under age, and also that he was under age at the time of the alleged receipt, because there would be two issues, the first triable by inspection of the Court, the second by a jury, 190.

If a writ be brought as against a receiver, and he plead payment as bailiff, he must also traverse the statement that he was receiver, and on this traverse issue will be joined, but the pleading as to payment in the capacity of bailiff will be entered by way of protestation, 192.

(Attaint.) Plea of non-tenure in, 200, 201, note 7, Appendix B.

(Cosinage.) If, in an action brought against man and wife, it be pleaded

PLEADING—cont.

that the *consanguinea* is in fact the wife named in the writ, the demandant will not be allowed to aver that the *consanguinea* is dead, but must say that the tenant is a different person, and assign a diversity of father and mother, 254-256; 257, note 11.

(Deceit.) If it be alleged that the defendant caused the parol to be put without day by having *Profert* made of a Protection *quia profecturus*, &c., when he was in fact in England before its production, and for a month afterwards, it is unnecessary to state in the declaration for what period the Protection was to last, or that the defendant did not leave England during that period, 234-236.

(Dower.) The tenant was allowed, after default, to plead that the demandant had disseised him since the default, and, notwithstanding the delay, the demandant could only aver the contrary. *Sed quare*, 126.

If the tenant plead in bar a release of the woman and her second husband by fine, he does so at his peril, and must be answered; and he cannot be compelled to say whether the parcel of which a third part is demanded was in demesne or in service in their hands when the fine was levied, 214-216.

Pleadings in, 217, note 10.

(Formedon in the Descender.) If deeds of the ancestor be pleaded in bar, and the demandant be an infant, the parol will demur until his full age, because he cannot admit, or deny, or answer to them until of full age, 120-125.

(Formedon in the Remainder.) Plea of fine and non-claim within a year by the ancestor to whom the imita-

PLEADING—*cont.*

tion was in fee simple. Replication that the ancestor was a *feme covert* at the time of the supposed fine, 240.

(*Quare impedit.*) Though it is true that each party is *actor*, because either may recover against the other, yet the plaintiff (who brings the action) has a right to be answered either by traverse or by confession and avoidance, 272.

(*Replevin.*) It was pleaded, in abatement of an avowry, that A. had avowed as brother and heir of J., to whom and to J.'s wife and the heirs of J. a rent had been granted, and it was not stated in the avowry that the wife was dead. This exception to the form was not allowed because there had been aid-prayer after the avowry, 168.

(*Trespas.*) If it be pleaded, in respect of goods carried away, that they were received from the Sheriff in execution of a judgment, the plaintiff cannot aver his writ in general terms, but must say that the defendant took the goods *de son tort demesne*, and traverse the delivery by the Sheriff, 172-174; 175, note 7.

If writs be in respect of trees cut down, and warren hunted, and fish-ponds fished, the defendant may, without alleging any right in himself, plead in abatement of a writ that the plaintiff holds in common with another person not named, and the plaintiff must traverse the tenure of that other person, 220.

(*Wardship.*) When wardship both of the lands and of the body of the heir are in demand, a plea of priority of feoffment in relation to the wardship of the body is an admission that the lands were held of the plaintiff, 129.

71295.

PLEADING—*cont.*

(*Waste.*) If the grantee of a reversion bring *Waste* against two persons who hold for the life of one of them, and if the latter appear alone and plead that he was sole tenant on the day of the purchase of the writ, the plea is sufficient without any statement that he was sole tenant at the time of the grant of the reversion, and issue will be joined thereon, 240-242.

See BILL OF EXCEPTIONS; COVENANT; DETINUE; ENTRY SUR DISSEISIN; ESCHEAT; MORT D'ANCESTOR; QUARE IMPEDIT; REPLEVIN; SCIRE FACIAS; WARDSHIP.

POPE, THE :

The Judges Delegate of. See EX-COMMUNICATION.

PREROGATIVE :

See KING, THE ; STATUTES, CONSTRUCTION OF.

PROCESS :

If a *Venire facias* issue to compel one to show cause why he sued execution on a Statute Merchant, contrary to his own deed, and the Sheriff return that he has no lands wherein he can be warned, and it be shown that he has had livery of the lands of the recognisor, an *Alias venire facias* shall issue to warn him in the lands of which livery has been made, 12.

Process in plea of land where one of two tenants appears and the other makes default, 66.

Process on writ of Account for one who was outlawed thereon, and had pardon of Outlawry, 68.

Process on writ of Wardship, 94-96, 98.

Process on writ of Mesne, 98.

Process against a Bishop, 98.

Process on Voucher, 126-128, 276-278.

The effect of omitting to make pro-

PROCESS—*cont.*

cess against the witnesses to a deed denied, as well as the jurors, 130.

Process on Entry *ad terminum qui præterit* brought by the heir, when bastardy has been alleged, when the Bishop has certified that he is *mulier*, and when the tenant has made default on the Resummons, 134-139.

See DISCONTINUANCE.

PROCLAMATION :

Effect of, on writ of Wardship, 94-96.

PROTECTION :

Whether vouchee on a writ of Wardship can put the parol without day by a Protection, 102.

See PLEADING (Deceit).

PUTURE :

Of a beadle or "landserjeant," 33, note, 15 ; 34.

Q

QUARE IMPEDIT :

Action of, brought in respect of a Vicarage, 150-160 ; 161, note 2.

Action of, where the claim to present was on the ground that the advowson, being held of the plaintiffs, had been aliened, without licence, to a Bishop, in mortmain, and it was pleaded that the alienation had been to the Bishop and his heirs, and not in mortmain to the Bishop and his successors, 208-214.

Various pleadings in, 264-274.

If A. be seised of a manor, to which an advowson is appendant, at the time at which a church becomes void, and B. disseise him, he will, nevertheless, though ousted from the

QUARE IMPEDIT—*cont.*

manor, recover his presentation by *Quare impedit*, 264-274 ; 275, note 1.

See ABATEMENT OF WRITS ; VICARAGE.

QUARE NON ADMISIT :

Brought apparently pending writ of *Quare impedit*, in respect of the same vicarage, 150.

Oyer of record of previous recovery not allowed in, 162.

The writ of, is an Original Writ, 162.

See BILL OF EXCEPTIONS.

QUID JURIS CLAMAT :

If the demandants claim against A. and B. his wife, as tenants for the life of B., by virtue of a note of a fine, and the tenants allege that B. and her previous husband had a gift by another fine, in special tail, and that she thus has a fee tail, but admit that the first husband died without issue, and issue be joined as to whether B. held for life only or otherwise, the whole matter shall be entered on the roll, and the jury shall enquire thereof, and judgment shall be given in accordance with the finding, 6-10.

Change of practice as to the form of the writ, 144-146.

If in a Fine one be supposed to be tenant for life, and the *Quid juris clamat* be brought against him as tenant for life, and he make *profert* of a deed whereby the cognisor covenants that, if he die within twenty years, his executors or assigns shall hold until the twenty years have expired, he will not be compelled to attorn, 262-264.

See ABATEMENT OF WRITS.

R

RECEIPT :

If one having the estate of tenant by Statute Merchant make default after default, the reversioner shall not be admitted to defend his right, 98-100.

If a lessor grant his reversion to another person for life, and the tenant attorn to that other person, the heir of the lessor shall, nevertheless, on the default of the tenant, be admitted to defend, 178-180.

RECORD :

What record shall be sent to the Justices of *Nisi Prius* as a full record. If a full record be not sent, the Court of Common Pleas will have no regard to what is done at *Nisi prius*, 70.

In Attaint, the record upon which the Attaint issued is not a full record if it do not contain judgment as well as verdict; and if a record which is not full be produced in the Court of Common Pleas, and there be a full record in the possession of Justices, the plaintiff must sue out the latter, 172.

RECORDARI FACIAS LOQUELAM :

Removal of cause by, from the Court of Queen Philippa into the Common Bench, 106.

Where the suitors in Court of Ancient Demesne would not make any record, according to the Sheriff's return, and persisted in holding the plea, the remedy was (*per Hillary, Ch.J. C.P.*) by *Audita Querela*, 204-206.

RE-EXTENT.

See EXTENT.

REMOVAL OF CAUSES :

From the Court of Queen Philippa into the Common Bench, 106.

RENT :

If A. inherit a rent arising out of a lease to B. for B.'s life, and A. enter into warranty in Dower, it was said that although the rent shall not be given to a tenant in Dower, it shall, upon a *Scire facias*, be given to the tenant who recovers over to the value, 22.

Writ of Escheat in respect of rent, 62-64.

REPLEVIN :

A. brings Replevin against B., who avows on C. It is pleaded that A. and his wife hold, in right of the wife, in a certain manor, certain tenements (whereof the place where the taking of the beasts was effected is parcel) of B., by certain services, and that B. cannot avow on any other. It is replied that C.'s ancestor D., whose heir C. is, was seised of the whole of the manor in the reign of Henry III., and held it of E., whose estate B. has, and gave the particular tenements held by A. and A.'s wife to his daughter F. in the reign of Henry III., in tail, to hold of D. and his heirs by certain services, including that of paying two marks for cornage to the chief lords. F.'s daughter G. conveyed the tenements to H. the father of A.'s wife. B. therefore prays judgment whether A. by reason of any seisin of the rent had (by B.) through the hands of A. and his wife (who paid the rent for C., the very tenant of B.) ought to be admitted to estate B. from his very tenant C. It is rejoined that D. conveyed the tenements to F. in fee simple with-

REPLEVIN—*cont.*

out mention of the person of whom they were to be held, or of any services to be rendered to anyone for D., and that F. attorned in respect of the two marks to E. After F.'s death, her son and heir I. attorned to E.'s son K., and so all those whose estate A. and his wife have rendered the services to E. and his heirs, and those whose estate B. has; and F. and her heirs and those whose estate A. and his wife have never rendered the services to D. or his heirs, and judgment is prayed whether the taking can be avowed on anyone but A. and his wife. B. not admitting the allegations in the rejoinder, repeats that D. gave the tenements to F. in tail to hold of D. and his heirs. A. repeats that D. conveyed the tenements to F. in fee simple, and not in fee tail as supposed by B., and issue is joined thereon, 32-48.

Removal of, from Queen Philippa's Court into the Common Bench, and cause assigned, 106.

Avowry for arrears of a rent-charge granted to her co-parceners by a parcener to whom had been allotted more than to the others, 166.

The plaintiff in Replevin becomes, in a manner, defendant, after the avowry, 168.

Return adjudged to the avowant where the plaintiff, having prayed aid, which was not allowed, did not traverse the avowry, 170.

Second Deliverance thereon, 170.

Return adjudged irreplevisable, 202.

RETURN OF WRITS.

See SHERIFF.

ROLLS :

Amendment of roll, on the prayer of a tenant, after a day had been given to the demandant, because the Jus-

ROLLS—*cont.*

tices recorded that it was not in accordance with the plea, 64.

Entry upon. *See* ESCHEAT; QUID JURIS CLAMAT.

S

SCIRE FACIAS:

In *Sci. fu.* to have execution after recovery on writ of Dower it was pleaded that the recoverer was not tenant, but this was held to be no good plea against execution unless the defendant stated who actually was tenant, 102-104.

See SHERIFF; VENUE.

SCIRE FACIAS IN CHANCERY:

Upon a Certificate from the Treasurer, for tenants of a manor to show cause why the manor should not be seized into the King's hand, 28-32.

For the repeal of a charter to the Burgesses of Wells. Pleadings thereon, and ultimate repeal, 108-120.

SCIRE FACIAS UPON FINE:

Aid-prayer in, 100, 101, note 14.

Bad return of Sheriff in, 106-108, 202; 205, note 2.

Exception to good return of Sheriff in, 176.

Record of, 293-308.

Proceedings on, brought to an end by submission of the parties to an Ordinance of the King and Council, 295.

See ABATEMENT OF WRITS; SHERIFF.

SMA-WALLS:

Repair of, 256-258; 259, note 3.

SHERIFF:

Amerced for bad return to a writ, 108-108.

Liable for damages, as well as for the debt, if he allow one taken in execution of a Statute Merchant to go at large, 146-148.

If a *Scire facias* on a Fine have the *Teste* of the Chief Justice of the Court of Common Pleas, and the Sheriff return *Scire feci ad essendum coram Justiciariis vestris*, the return is good, because it is the King's writ, though under the *Teste* of a Justice, 176.

If to a *Scire facias* the Sheriff return *Scire feci J. quod sit coram Justiciariis ad diem et locum in brevi contentum, secundum tenorem hujus brevis, per A. et B.*, the return is insufficient, because the Sheriff has not warned the garnishee to do that which is required in the writ, 202-204; 205, note 2.

Technical exceptions to return of Sheriff to a writ of *Scire facias* on Fine disallowed, 222-224.

SI NON OMNES :

Writ of. See NOVEL DISSEISIN.

SOCAGE.

See DOWER ; GUARDIAN IN SOCAGE ;
WARDSHIP ; WASTE.

STATUTES CITED :

9 Hen. III. (*Magna Charta*), c. 36, 156, 160.

20 Hen. III. (Merton), c. 6, 208.

52 Hen. III. (Marlb.), c. 7, 94, 96, 98.

3 Edw. I. (Westm. 1), c. 22, 208.

_____ c. 40, 250.

6 Edw. I. (Gloucester), c. 1, 181, 182.

_____ c. 5, 243,

note 13.

7 Ed. I., Stat. 2 (Mortmain), 24, 156, 160, 218.

18 Ed. I. (Westm. 2), c. 2, 202.

_____ c. 9, 93.

_____ c. 31, 164.

_____ c. 35, 138.

STATUTES CITED—cont.

13 Edw. I., Stat. 3 (*De Mercatoribus*), 146.

27 Edw. I. (*De Finibus levatis*), 295.

17 Edw. II., Stat. 1. (*Prærogativa Regis*), 132, 134.

5 Edw. III., c. 12, 4.

14 Edw. III., c. 6, 198.

STATUTES, CONSTRUCTION OF :

As to the construction of 52 Hen. III. (Marlb.), c. 7, 94-96.

As to the construction of the Statute 17 Edw. II., Stat. 1 (*Prærogativa Regis*) in relation to wardship and the exemption of the Archbishop of Canterbury, 132-134.

STATUTE MERCHANT :

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On 25 July 1822, the House of Commons presented an address to the Crown, stating that the editions of the works of our ancient historians were inconvenient and defective; that many of their writings still remained in manuscript, and, in some cases, in a single copy only. They added, "that an uniform and convenient edition of the whole, published under His Majesty's royal sanction, would be an undertaking honourable to His Majesty's reign, and conducive to the advancement of historical and constitutional knowledge; that the House therefore humbly besought His Majesty, that He would be graciously pleased to give such directions as His Majesty, in His wisdom, might think fit, for the publication of a complete edition of the ancient historians of this realm."

The Master of the Rolls, being very desirous that effect should be given to the resolution of the House of Commons, submitted to Her Majesty's Treasury in 1857 a plan for the publication of the ancient chronicles and memorials of the United Kingdom, and it was adopted accordingly.

Of the Chronicles and Memorials, the following volumes have been published. They embrace the period from the earliest time of British history down to the end of the reign of Henry VII.

1. **THE CHRONICLE OF ENGLAND**, by JOHN CAPGRAVE. *Edited by the Rev. F. C. HINGESTON, M.A.* 1858.

Capgrave's Chronicle extends from the creation of the world to the year 1417. As a record of the language spoken in Norfolk (being written in English), it is of considerable value.

2. **CHRONICON MONASTERII DE ABINGDON**. Vols. I. and II. *Edited by the Rev. JOSEPH STEVENSON, M.A., Vicar of Leighton Buzzard.* 1858.

This Chronicle traces the history of the monastery from its foundation by King Ina of Wessex, to the reign of Richard I. The author had access to the title deeds of the house, and incorporates into his history various charters of the Saxon kings, of great importance as illustrating not only the history of the locality but that of the kingdom.

3. **LIVES OF EDWARD THE CONFESSOR**. I.—*La Estoire de Seint Aedward le Rei*. II.—*Vita Beati Edvardi Regis et Confessoris*. III.—*Vita Æduuardi Regis qui apud Westmonasterium requiescit*. *Edited by HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge.* 1858.

The first is a poem in Norman French, probably written in 1245. The second is an anonymous poem, written between 1440 and 1450, which is mainly valuable as a specimen of the Latin poetry of the time. The third, also by an anonymous author, was apparently written between 1066 and 1074.

4. **MONUMENTA FRANCISCANA**. Vol. I.—*Thomas de Eccleston de Adventu Fratrum Minorum in Angliam. Adæ de Marisco Epistolæ. Registrum Fratrum Minorum Londoniæ.* *Edited by J. S. BREWER, M.A., Professor of English Literature, King's College, London.* Vol. II.—*De Adventu Minorum; re-edited, with additions. Chronicle of the Grey Friars. The ancient English version of the Rule of St. Francis. Abbreviatio Statutorum, 1451, &c.* *Edited by RICHARD HOWLETT, Barrister-at-Law.* 1858, 1882.

The first volume contains original materials for the history of the settlement of the order of St. Francis in England, the letters of Adam de Marisco, and other papers. The second volume contains materials found since the first volume was published.

5. *FASCICULI ZIZANIORUM MAGISTRI JOHANNIS WYCLIF CUM TRITICO*. Ascribed to THOMAS NETTER, of WALDEN, Provincial of the Carmelite Order in England, and Confessor to King Henry the Fifth. *Edited by* the Rev. W. W. SHIRLEY, M.A., Tutor and late Fellow of Wadham College, Oxford. 1858.

This work gives the only contemporaneous account of the rise of the Lollards.

6. *THE BUIK OF THE CRONICLIS OF SCOTLAND; or, A Metrical Version of the History of Hector Boece*; by WILLIAM STEWART. Vols. I., II., and III. *Edited by* W. B. TURNBULL, Barrister-at-Law. 1858.

This is a metrical translation of a Latin Prose Chronicle, written in the first half of the 16th century. The narrative begins with the earliest legends and ends with the death of James I. of Scotland, and the "evil ending of the traitors that slew him." The peculiarities of the Scottish dialect are well illustrated in this version.

7. *JOHANNIS CAPGRAVE LIBER DE ILLUSTRIBUS HENRICIS*. *Edited by* the Rev. F. C. HINGESTON, M.A. 1858.

The first part relates only to the history of the Empire from the election of Henry I. the Fowler, to the end of the reign of the Emperor Henry VI. The second part is devoted to English history, from the accession of Henry I. in 1100, to 1443, which was the twenty-fourth year of the reign of Henry VI. The third part contains the lives of illustrious men who have borne the name of Henry in various parts of the world.

8. *HISTORIA MONASTERII S. AUGUSTINI CANTUARIENSIS*, by THOMAS OF ELMHAM, formerly Monk and Treasurer of that Foundation. *Edited by* CHARLES HARDWICK, M.A., Fellow of St. Catharine's Hall, and Christian Advocate in the University of Cambridge. 1858.

This history extends from the arrival of St. Augustine in Kent until 1191.

9. *EULOGIUM (HISTORIARUM SIVE TEMPORIS): Chronicon ab Orbe condito usque ad Annum Domini 1366; a monacho quodam Malmesbiriensi exaratum*. Vols. I., II., and III. *Edited by* F. S. HAYDON, B.A. 1858-1863.

This is a Latin Chronicle extending from the Creation to the latter part of the reign of Edward III., and written by a monk of Malmesbury, about the year 1367. A continuation carries the history of England down to the year 1413.

10. *MEMORIALS OF HENRY THE SEVENTH: Bernardi Andreæ Tholosatis Vita Regis Henrici Septimi; necnon alia quædam ad eundem Regem spectantia*. *Edited by* JAMES GAIRDNER. 1858.

The contents of this volume are—(1) a life of Henry VII., by his poet Laureate and historiographer, Bernard André, of Toulouse, with some compositions in verse, of which he is supposed to have been the author; (2) the journals of Roger Machado during certain embassies to Spain and Brittany, the first of which had reference to the marriage of the King's son, Arthur, with Catharine of Arragon; (3) two curious reports by envoys sent to Spain in 1505 touching the succession to the Crown of Castile, and a project of marriage between Henry VII. and the Queen of Naples; and (4) an account of Philip of Castile's reception in England in 1504. Other documents of interest are given in an appendix.

11. *MEMORIALS OF HENRY THE FIFTH. I.—Vita Henrici Quinti, Roberto Redmanno auctore. II.—Versus Rhythmici in laudem Regis Henrici Quinti. III.—Elmhami Liber Metricus de Henrico V.* *Edited by* CHARLES A. COLE. 1858.

12. *MUNIMENTA GILDHALLÆ LONDONIENSIS; Liber Albus, Liber Custumarum, et Liber Horn, in archivis Gildhallæ asservati*. Vol. I., Liber Albus. Vol. II. (in Two Parts), Liber Custumarum. Vol. III., Translation of the Anglo-Norman Passages in Liber Albus, Glossaries, Appendices, and Index. *Edited by* HENRY THOMAS RILEY, M.A., Barrister-at-Law. 1859-1862.

The *Liber Albus*, compiled by John Carpenter, Common Clerk of the City of London in the year 1419, gives an account of the laws, regulations, and institutions of that City in the 12th, 13th, 14th, and early part of the 15th centuries. The *Liber Custumarum* was compiled in the early part of the 14th century during the reign of Edward II. It also gives an account of the laws, regulations, and institutions of the City of London in the 12th, 13th, and early part of the 14th centuries.

13. *CHRONICA JOHANNIS DE OXENEDES*. *Edited by* Sir HENRY ELLIS, K.H. 1859.

Although this Chronicle tells of the arrival of Hengist and Horsa, it substantially begins with the reign of King Alfred, and comes down to 1392. It is particularly valuable for notices of events in the eastern portions of the Kingdom.

14. A COLLECTION OF POLITICAL POEMS AND SONGS RELATING TO ENGLISH HISTORY, FROM THE ACCESSION OF EDWARD III. TO THE REIGN OF HENRY VIII. Vols. I. and II. *Edited by* THOMAS WRIGHT, M.A. 1859-1861.
15. The "OPUS TERTIUM," "OPUS MINUS," &c. of ROGER BACON. *Edited by* J. S. BREWER, M.A., Professor of English Literature, King's College, London. 1859.
16. BARTHOLOMÆI DE COTTON, MONACHI NORWICENSIS, HISTORIA ANGLICANA; 449-1298; necnon ejusdem Liber de Achiepiscopis et Episcopis Angliæ. *Edited by* HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge, 1859.
17. BRUT Y TYWYSOGION; or, The Chronicle of the Princes of Wales. *Edited by* the Rev. JOHN WILLIAMS AB ITHEL, M.A. 1860.

This work, written in the ancient Welsh language, begins with the abdication and death of Caedwala at Rome, in the year 681, and continues the history down to the subjugation of Wales by Edward I., about the year 1282.
18. A COLLECTION OF ROYAL AND HISTORICAL LETTERS DURING THE REIGN OF HENRY IV. 1399-1404. *Edited by* the Rev. F. C. HINGESTON, M.A., of Exeter College, Oxford. 1860.
19. THE REPRESSOR OF OVER MUCH BLAMING OF THE CLERGY. By REGINALD PECOCK, sometime Bishop of Chichester. Vols. I. and II. *Edited by* the Rev. CHURCHILL BABINGTON, B.D., Fellow of St. John's College, Cambridge. 1860.

The "Repressor" may be considered the earliest piece of good theological disquisition of which our English prose literature can boast. The author was born about the end of the fourteenth century, consecrated Bishop of St. Asaph in the year 1444, and translated to the see of Chichester in 1450. His work is interesting chiefly because it gives a full account of the views of the Lollards, and it has great value for the philologist.
20. ANNALES CAMBRIÆ. *Edited by* the Rev. JOHN WILLIAMS AB ITHEL, M.A. 1860.

These annals, which are in Latin, commenced in 447, and come down to 1288. The earlier portion appears to be taken from an Irish Chronicle used by Tigernach, and by the compiler of the Annals of Ulster.
21. THE WORKS OF GIRALDUS CAMBRENSIS. Vols. I.-IV. *Edited by* the Rev. J. S. BREWER, M.A., Professor of English Literature, King's College, London. Vols. V.-VII. *Edited by* the Rev. JAMES F. DIMOCK, M.A., Rector of Barnburgh, Yorkshire. Vol. VIII. *Edited by* GEORGE F. WARNER, M.A., of the Department of MSS., British Museum. 1861-1891.

These volumes contain the historical works of Gerald du Barry, who lived in the reigns of Henry II., Richard I., and John. His works are of a very miscellaneous nature, both in prose and verse, and are remarkable for the anecdotes which they contain.
The *Topographia Hibernica* (in Vol. V.) is the result of Giraldus' two visits to Ireland the first in 1185, the second in 1185-6, when he accompanied Prince John into that country. The *Expugnatio Hibernica* was written about 1188, and may be regarded rather as a great epic than a sober relation of acts occurring in his own days. Vol. VI. contains the *Itinerarium Cambriæ et Descriptio Cambriæ*; and Vol. VII., the lives of S. Remigius and S. Hush. Vol. VIII. contains the Treatise *De Principum Instructione*, and an Index to Vols. I.-IV. and VIII.
22. LETTERS AND PAPERS ILLUSTRATIVE OF THE WARS OF THE ENGLISH IN FRANCE DURING THE REIGN OF HENRY THE SIXTH, KING OF ENGLAND. Vol. I., and Vol. II. (in Two Parts). *Edited by* the Rev. JOSEPH STEVENSON, M.A., Vicar of Leighton Buzzard. 1861-1864.
23. THE ANGLO-SAXON CHRONICLE, ACCORDING TO THE SEVERAL ORIGINAL AUTHORITIES. Vol. I., Original Texts. Vol. II., Translation. *Edited and translated by* BENJAMIN THORPE, Member of the Royal Academy of Sciences at Munich, and of the Society of Netherlandish Literature at Leyden. 1861.

There are at present six independent manuscripts of the Saxon Chronicle, ending in different years, and written in different parts of the country. In this edition, the text of each manuscript is printed in columns on the same page, so that the student may see at a glance the various changes which occur in orthography.

24. **LETTERS AND PAPERS ILLUSTRATIVE OF THE REIGNS OF RICHARD III. AND HENRY VII.** Vols. I. and II. *Edited by* JAMES GAIRDNER. 1861-1863.

The principal contents of the volumes are some diplomatic Papers of Richard III., correspondence between Henry VII. and Ferdinand and Isabella of Spain; documents relating to Edmund de la Pole, Earl of Suffolk; and a portion of the correspondence of James IV. of Scotland.

25. **LETTERS OF BISHOP GROSSETESTE.** *Edited by* the Rev. HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1861.

The letters of Robert Grosseteste range in date from about 1210 to 1253, and relate to various matters connected not only with the political history of England during the reign of Henry III., but with its ecclesiastical condition. They refer especially to the diocese of Lincoln, of which Grosseteste was bishop.

26. **DESCRIPTIVE CATALOGUE OF MANUSCRIPTS RELATING TO THE HISTORY OF GREAT BRITAIN AND IRELAND.** Vol. I. (in Two Parts); Anterior to the Norman Invasion. (*Out of Print*). Vol. II.; 1066-1200. Vol. III.; 1200-1327. *By* Sir THOMAS DUFFUS HARDY, D.C.L., Deputy Keeper of the Records. 1862-1871.

The object of this work is to publish notices of all known sources of British history, both printed and unprinted, in one continued sequence. The materials, when historical (as distinguished from biographical), are arranged under the year in which the latest event is recorded in the chronicle or history, and not under the period in which its author, real or supposed, flourished. Biographies are enumerated under the year in which the person commemorated died, and not under the year in which the life was written. A brief analysis of each work has been added when deserving it, in which original portions are distinguished from mere compilations. A biographical sketch of the author of each piece has been added, and a brief notice of such British authors as have written on historical subjects.

27. **ROYAL AND OTHER HISTORICAL LETTERS ILLUSTRATIVE OF THE REIGN OF HENRY III.** Vol. I., 1216-1235. Vol. II., 1236-1272. *Selected and edited by* the Rev. W. W. SHIRLEY, D.D., Regius Professor of Ecclesiastical History, and Canon of Christ Church, Oxford. 1862-1866.

28. **CHRONICA MONASTERII S. ALBANI.**—1. THOMÆ WALSINGHAM HISTORIA ANGLICANA; Vol. I., 1272-1381: Vol. II., 1381-1422. 2. WILLELMI RISHANGER CHRONICA ET ANNALES, 1259-1307. 3. JOHANNIS DE TROKELowe ET HENRICI DE BLANEFORDE CHRONICA ET ANNALES 1259-1296; 1307-1324; 1392-1406. 4. GESTA ABBATUM MONASTERII S. ALBANI, A THOMÆ WALSINGHAM, REGNANTE RICARDO SECUNDO, EJUSDEM ECCLESIE PRÆCENTORE, COMPILATA; Vol. I., 793-1290: Vol. II., 1290-1349: Vol. III., 1349-1411. 5. JOHANNIS AMUNDESHAM, MONACHI MONASTERII S. ALBANI, UT VIDETUR, ANNALES; Vols. I. and II. 6. REGISTRA QUORUNDAM ABBATUM MONASTERII S. ALBANI, QUI SÆCULO XV^{mo} FLORUERUNT; Vol. I., REGISTRUM ABBATIS JOHANNIS WHETHAMSTEDE, ABBATIS MONASTERII SANCTI ALBANI, ITERUM SUSCEPTÆ; ROBERTO BLAKENEY, CAPELLANO, QUONDAM ADSCHRIPTUM: Vol. II., REGISTRA JOHANNIS WHETHAMSTEDE, WILLELMI ALBON, ET WILLELMI WALINGFORDE, ABBATUM MONASTERII SANCTI ALBANI, CUM APPENDICE, CONTINENTE QUASDAM EPISTOLAS, A JOHANNNE WHETHAMSTEDE CONSCRIPTAS. 7. YPODIGMA NEUSTRIÆ A THOMÆ WALSINGHAM, QUONDAM MONACHO MONASTERII S. ALBANI, CONSCRIPTUM. *Edited by* HENRY THOMAS RILEY, M.A., Barrister-at-Law. 1863-1876.

In the first two volumes is a History of England, from the death of Henry III. to the death of Henry V., by Thomas Walsingham, Precentor of St. Albans.

In the 3rd volume is a Chronicle of English History, attributed to William Rishanger, who lived in the reign of Edward I.: an account of transactions attending the award of the kingdom of Scotland to John Balliol, 1291-1292, also attributed to William Rishanger, but on no sufficient ground: a short Chronicle of English History, 1292 to 1300, by an unknown hand: a short Chronicle Willelmi Rishanger Gesta Edwardi Primi, Regis Angliæ, with Annales Regum Angliæ, probably by the same hand: and fragments of three Chronicles of English History, 1285 to 1307.

In the 4th volume is a Chronicle of English History, 1259 to 1296: Annals of Edward II., 1307 to 1323, by John de Trokelowe, a monk of St. Albans, and a continuation of Trokelowe's Annals, 1323, 1324, by Henry de Blanford: a full Chronicle of English History, 1392 to 1406; and an account of the Benefactors of St. Albans, written in the early part of the 15th century.

The 5th, 6th, and 7th volumes contain a history of the Abbots of St. Albans, 793 to 1411, mainly compiled by Thomas Walsingham: with a Continuation.

The 8th and 9th volumes, in continuation of the Annals, contain a Chronicle, probably by John Amundesham, a monk of St. Albans.

The 10th and 11th volumes relate especially to the acts and proceedings of Abbots Whetamstede, Albon, and Wallingford.

The 12th volume contains a compendious History of England to the reign of Henry V., and of Normandy in early times, also by Thomas Walsingham, and dedicated to Henry V.

29. **CHRONICON ABBATIE EVESHAMENSIS, AUCTORIBUS DOMINICO PRIORE EVESHAMIE ET THOMA DE MARLEBERGE ABBATE, A FUNDATIONE AD ANNUM 1213, UNA CUM CONTINUATIONE AD ANNUM 1418.** *Edited by the Rev. W. D. MACRAY, Bodleian Library, Oxford. 1863.*

The Chronicle of Evesham illustrates the history of that important monastery from about 690 to 1418. Its chief feature is an autobiography, which makes us acquainted with the inner daily life of a great abbey. Interspersed are many notices of general, personal, and local history.

30. **RICARDI DE CIRENCESTRIA SPECULUM HISTORIALE DE GESTIS REGUM ANGLIE.** Vol. I., 447-871. Vol. II., 872-1066. *Edited by JOHN E. B. MAYOR, M.A., Fellow of St. John's College, Cambridge. 1863-1869.*

Richard of Cirencester's history, in four books, extends from 447 to 1066. It gives many charters in favour of Westminster Abbey, and a very full account of the lives and miracles of the saints, especially of Edward the Confessor, whose reign occupies the fourth book. A treatise on the Coronation, by William of Sudbury, a monk of Westminster, fills book ii. c. 3.

31. **YEAR BOOKS OF THE REIGN OF EDWARD THE FIRST.** Years 20-21, 21-22, 30-31, 32-33, and 33-35 Edw. I.; and 11-12 Edw. III. *Edited and translated by ALFRED JOHN HORWOOD, Barrister-at-Law. Years 12-13, 13-14, 14, 14-15, and 15, Edward III. Edited and translated by LUKE OWEN PIKE, M.A., Barrister-at-Law. 1863-1891.*

The "Year Books" are the earliest of our Law Reports. They contain matter not only of practical utility to lawyers in the present day, but also illustrative of almost every branch of history, while for certain philological purposes they hold a position absolutely unique.

32. **NARRATIVES OF THE EXPULSION OF THE ENGLISH FROM NORMANDY, 1449-1450.**—Robertus Blondelli de Reductione Normannie: Le Recouvrement de Normendie, par Berry, Hérault du Roy: Conférences between the Ambassadors of France and England. *Edited by the Rev. JOSEPH STEVENSON, M.A. 1863.*

33. **HISTORIA ET CARTULARIUM MONASTERII S. PETRI GLOUCESTRIE.** Vols. I., II., and III. *Edited by W. H. HART, F.S.A., Membre correspondant de la Société des Antiquaires de Normandie. 1863-1867.*

34. **ALEXANDRI NECKAM DE NATURIS RERUM LIBRI DUO; with NECKAM'S POEM, DE LAUDIBUS DIVINÆ SAPIENTIÆ.** *Edited by THOMAS WRIGHT, M.A. 1863.*

In the *De Naturis Rerum* are to be found what may be called the rudiments of many sciences mixed up with much error and ignorance. Neckam had his own views in morals, and in giving us a glimpse of them, as well as of his other opinions, he throws much light upon the manners, customs, and general tone of thought prevalent in the twelfth century.

35. **LEECHDOMS, WORTCUNNING, AND STARCRAFT OF EARLY ENGLAND; being a Collection of Documents illustrating the History of Science in this Country before the Norman Conquest.** Vols. I.-III. *Collected and edited by the Rev. T. OSWALD COCKAYNE, M.A. 1864-1866.*

36. **ANNALES MONASTICI.** Vol. I.:—Annales de Margan, 1066-1232; Annales de Theokesberia, 1066-1263; Annales de Burton, 1004-1263. Vol. II.:—Annales Monasterii de Wintonia, 519-1277; Annales Monasterii de Waverleia, 1-1291. Vol. III.:—Annales Prioratus de Dunstaplia, 1-1297. Annales Monasterii de Bermundeseia, 1042-1432. Vol. IV.:—Annales Monasterii de Oseneia, 1016-1347; Chronicon vulgo dictum Chronicon Thomæ Wykes, 1066-1289; Annales Prioratus de Wigornia, 1-1377. Vol. V.:—Index and Glossary. *Edited by HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, and Registrar of the University, Cambridge. 1864-1869.*

The present collection embraces chronicles compiled in religious houses in England during the thirteenth century. These distinct works are ten in number. The extreme period which they embrace ranges from the year 1 to 1432.

37. *MAGNA VITA S. HUGONIS EPISCOPI LINCOLNIENSIS*. Edited by the Rev. JAMES F. DIMOCK, M.A., Rector of Barnburgh, Yorkshire. 1864.

This work is valuable, not only as a biography of a celebrated ecclesiastic but as the work of a man, who, from personal knowledge, gives notices of passing events, as well as of individuals who were then taking active part in public affairs.

38. *CHRONICLES AND MEMORIALS OF THE REIGN OF RICHARD THE FIRST*. Vol. I.:—*ITINERARIUM PEREGRINORUM ET GESTA REGIS RICARDI*. Vol. II.:—*EPISTOLÆ CANTUARIENSES*; the Letters of the Prior and Convent of Christ Church, Canterbury; 1187 to 1199. Edited by the Rev. WILLIAM STUBBS, M.A., Vicar of Navestock, Essex, and Lambeth Librarian. 1864-1865.

The authorship of the Chronicle in Vol. I., hitherto ascribed to Geoffrey Vinesauf, is now more correctly ascribed to Richard, Canon of the Holy Trinity of London.

In letters in Vol. II., written between 1187 and 1190, had their origin in a dispute which arose from the attempts of Baldwin and Hubert, archbishops of Canterbury, to found a college of secular canons, a project which gave great umbrage to the monks of Canterbury.

39. *RECUEIL DES CRONIQUES ET ANCIENNES ISTORIES DE LA GRANT BRETAGNE A PRESENT NOMME ENGLETERRE*, par JEHAN DE WAURIN. Vol. I. Albina to 688. Vol. II., 1399-1422. Vol. III., 1422-1431. Edited by WILLIAM HARDY, F.S.A. 1864-1879. Vol. IV., 1431-1447. Vol. V., 1447-1471. Edited by Sir WILLIAM HARDY, F.S.A., and EDWARD L. C. P. HARDY, F.S.A. 1884-1891.

40. *A COLLECTION OF THE CHRONICLES AND ANCIENT HISTORIES OF GREAT BRITAIN, NOW CALLED ENGLAND*, by JOHN DE WAURIN. Vol. I., Albina to 668. Vol. II., 1399-1422. Vol. III., 1422-1431. (Translations of the preceding Vols. I., II., and III.) Edited and translated by Sir WILLIAM HARDY, F.S.A., and EDWARD L. C. P. HARDY, F.S.A. 1864-1891.

41. *POLYCHRONICON RANULPHI HIGDEN*, with Trevisa's Translation. Vols. I. and II. Edited by CHURCHILL BABINGTON, B.D., Senior Fellow of St. John's College, Cambridge. Vols. III.-IX. Edited by the Rev. JOSEPH RAWSON LUMBY, D.D., Norrisian Professor of Divinity, Vicar of St. Edward's, Fellow of St. Catharine's College, and late Fellow of Magdalene College, Cambridge. 1865-1886.

This chronicle begins with the creation, and is brought down to the reign of Edward III. It enables us to form a very fair estimate of the knowledge of history and geography which well-informed readers of the fourteenth and fifteenth centuries possessed, for it was then the standard work on general history.

The two English translations, which are printed with the original Latin, afford interesting illustrations of the gradual change of our language, for one was made in the fourteenth century, the other in the fifteenth.

42. *LE LIVRE DE REIS DE BRITTANIE E LE LIVRE DE REIS DE ENGLETERRE*. Edited by the Rev. JOHN GLOVER, M.A., Vicar of Brading, Isle of Wight, formerly Librarian of Trinity College, Cambridge. 1865.

These two treatises are valuable as careful abstracts of previous historians. Some various readings are given which are interesting to the philologist as instances of semi-Saxonised French.

43. *CHRONICA MONASTERII DE MELSA AB ANNO 1150 USQUE AD ANNUM 1406*, Vols. I.-III. Edited by EDWARD AUGUSTUS BOND, Assistant Keeper of Manuscripts, and Egerton Librarian, British Museum. 1866-1868.

The Abbey of Meaux was a Cistercian house, and the work of its abbot is a faithful and often minute record of the establishment of a religious community, of its progress in forming an ample revenue, of its struggles to maintain its acquisitions, and of its relations to the governing institutions of the country.

44. *MATTHE PARISIENSIS HISTORIA ANGLORUM, SIVE, UT VULGO DICITUR, HISTORIA MINOR*. Vols. I., II., and III. 1067-1253. Edited by Sir FREDERICK MADDEN, K.H., Keeper of the Manuscript Department of British Museum. 1866-1869.

45. *LIBER MONASTERII DE HYDA: A CHRONICLE AND CHARTULARY OF HYDE ABBEY, WINCHESTER, 455-1023*. Edited by EDWARD EDWARDS. 1866.

The "Book of Hyde" is a compilation from much earlier sources which are usually indicated with considerable care and precision. In many cases, however, the Hyde

- Chronieler appears to correct, to qualify, or to simplify the statements, which, in substance, he adopts.

There is to be found, in the "Book of Hyde," much information relating to the reign of King Alfred which is not known to exist elsewhere. The volume contains some curious specimens of Anglo-Saxon and mediæval English.

46. **CHRONICON SCOTORUM: A CHRONICLE OF IRISH AFFAIRS**, from the earliest times to 1135; and **SUPPLEMENT**, containing the Events from 1141 to 1150. *Edited, with Translation, by WILLIAM MAUNSELL HENNESSY, M.R.I.A.* 1866.

47. **THE CHRONICLE OF PIERRE DE LANGTOFT, IN FRENCH VERSE, FROM THE EARLIEST PERIOD TO THE DEATH OF EDWARD I.** Vols. I. and II. *Edited by THOMAS WRIGHT, M.A.* 1866-1868.

It is probable that Pierre de Langtoft was a canon of Bridlington, in Yorkshire, and lived in the reign of Edward I., and during a portion of the reign of Edward II. This chronicle is divided into three parts; in the first, is an abridgment of Geoffrey of Monmouth's "Historia Britonum;" in the second, a history of the Anglo-Saxon and Norman kings, to the death of Henry III.; in the third, a history of the reign of Edward I. The language is a curious specimen of the French of Yorkshire.

48. **THE WAR OF THE GAEDHIL WITH THE GAILL, OR THE INVASIONS OF IRELAND BY THE DANES AND OTHER NORSEMEN.** *Edited, with a Translation, by the Rev. JAMES HENTHORN TODD, D.D., Senior Fellow of Trinity College, and Regius Professor of Hebrew in the University of Dublin.* 1867.

The work in its present form, in the editor's opinion, is a comparatively modern version of an ancient original. The story is told after the manner of the Scandinavian Sagas.

49. **GESTA REGIS HENRICI SECUNDI BENEDICTI ABBATIS. CHRONICLE OF THE REIGNS OF HENRY II. AND RICHARD I., 1169-1192, known under the name of BENEDICT OF PETERBOROUGH.** Vols. I. and II. *Edited by the Rev. WILLIAM STUBBS, M.A., Regius Professor of Modern History, Oxford, and Lambeth Librarian.* 1867.

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